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THE  
SUPERVISORS' MANUAL,

A

PRACTICAL TREATISE ON THE LAW

APPLICABLE TO THE DUTIES OF SUPERVISORS FROM  
THE DATE OF THEIR ELECTION TO THE END OF  
THEIR OFFICIAL TERM, WITH THE DECIS-  
IONS OF THE COURTS AND THE

NECESSARY FORMS.

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By GEORGE C. <sup>name</sup>MOREHOUSE,  
*Of the Utica Bar, formerly one of the Supervisors of Oneida County.*

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ALBANY, N. Y.:  
JOHN D. PARSONS, JR., LAW PUBLISHER.  
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# PREFACE.

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One of the marked tendencies of legislation in this State, for the past few years, is that of intrusting the direction and control of purely local affairs to local officers, leaving the State legislature to act in those cases which affect the whole State.

This is manifest in the additional powers conferred upon town and county officers, the responsibility of towns for the acts and negligence of their officers, and particularly in the extensive legislative powers granted to boards of supervisors over matters formerly under the exclusive control of the State legislature.

The statutes defining the powers of supervisors were formerly contained in a page or two of the session laws; now a volume is required for the same purpose.

With the extension of power comes a corresponding increase in duties and responsibilities and a consequent demand for more intelligent, better qualified officers.

The questions to be acted on by boards of supervisors are perplexing and complicated, and require, if properly decided, great care, discretion, sound judgment, and a thorough knowledge of the statutes on the subject.

Such knowledge is not intuitive nor inherited. It cannot be acquired except by diligent effort and careful study, and they are a wise people that, having found a competent officer, retain him in his place as long as he will consent to serve.

It is the aim of this work to give the law and the practice pertaining to the office of supervisor, as they exist on November 1, 1886.

For this purpose a careful examination of the statutes, the decisions of the courts and the practice of the several boards of supervisors throughout the State has been made.

The work is an enlargement of a brief used by the writer while serving as one of the supervisors of Oneida county, and is arranged in the way found by him to be most convenient for practical, everyday use.

Judging from experience and from an examination of the published journals of the several boards of supervisors in the State, such boards are liable to err in two particulars:

*First.* Blindly following in the steps of their predecessors without knowing whether or not the precedent followed is founded upon sound legal principles.

*Second.* The assumption of more power than the law confers upon them.

It cannot be too thoroughly understood that the board of supervisors possess only such powers as are expressly or by necessary implication given to them; that they are not invested with absolute powers over all legislative subjects; that within the limited field, expressly defined and marked out for them by the legislature, they are authorized to act, and beyond this they cannot go; that the first question to be settled by them in any given case is, not are we prohibited from acting in the matter but is there any statute conferring upon us the right to act therein? If no statute conferring such power to act can be found, then they have no right to act.

The references in this volume to the Revised Statutes are to the seventh edition, by Banks Bros.

Acknowledgment is hereby made to Hon. M. H. Merwin, Hon. W. B. Sutton, A. C. Miller, Esq., R. O. Jones, Esq., of Utica, N. Y., to Messrs. Waufol, Lewis, Marshall, of the Oneida county board of supervisors, to R. B. Maxfield, clerk of the board, Hon. W. D. Biddlecome, school commissioner, Geo. E. Dunham, and Mr. John Kohler, ex-county treasurer, for many valuable suggestions.

To J. B. Cushman, of Utica, N. Y., one of the oldest and best qualified supervisors in the State, I am especially indebted for the benefit of his experience and the suggestions he has given, which have rendered his assistance invaluable.

G. C. M.

November 1, 1886.

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# SUPERVISORS' MANUAL.

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## CHAPTER I.

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| Sec. 1. Public officer not to be interested in any sale, lease or contracts, etc. | Sec. 3. Other violations of law.           |
| 2. Misappropriation, etc., and falsification of accounts by public officers.      | 4. Certain contracts may be declared void. |

**Section 1. Public Officer not to be Interested in any Sale, Lease or Contracts, etc.**—A public officer who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, is guilty of a misdemeanor.

Penal Code, § 473.

**§ 2. Misappropriation, etc., and Falsification of Accounts by Public Officers.**—A public officer, or a deputy or clerk of any such officer, and any other person receiving money on behalf of, or for account of the people of this State, or of any department of the government of this State, or of any bureau or fund created by law and in which the people of this State are directly or indirectly interested, or for or on account of any city, county, village or town, who,

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him; or

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account ; or

4. Willfully omits or refuses to pay over to the people of this State or their officer or agent authorized by law to receive the same, or to such city, village, county or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer when it is his duty, imposed by law, to pay over, or account for, the same ;

Is guilty of felony.

Id., § 470.

**§ 3. Other Violations of Law.**—An officer or other person mentioned in the last section, who willfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor, punishable by a fine not exceeding \$1,000, or imprisonment not exceeding two years, or both.

Id., § 471.

**§ 4. Certain Contracts may be Declared Void.**—*It seems* that contracts in violation of section 1 above, may be declared void at the instance of the city, county, village or town interested in such contracts.

§ 3, chap. 57, Laws of 1843.

## CHAPTER II.

### ELECTION AND QUALIFICATION.

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| <p>Sec. 5. Election.</p> <p>6. What qualifications a supervisor must possess.</p> <p>7. What offices a supervisor may not hold.</p> <p>8. Who are ineligible.</p> <p>9. Penalty for refusing to serve.</p> <p>10. Oath of office.</p> <p>11. Form of oath.</p> <p>12. Before whom oath to be taken.</p> <p>13. Certificate.</p> <p>14. Certificate to be filed.</p> <p>15. Penalty for acting without taking oath.</p> | <p>Sec. 16. Notice to be given supervisor elected.</p> <p>17. Tenure of office.</p> <p>18. If a supervisor is not chosen at town meeting, how proceed.</p> <p>19. Vacancies, what are, how filled.</p> <p>20. Form of order appointing supervisor.</p> <p>21. Such appointment cannot be questioned collaterally.</p> <p>22. Resignation of office.</p> <p>23. Supervisor elected to give security.</p> <p>24. Form of bonds or security.</p> <p>25. Qualifying, what is.</p> |
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### ELECTION AND QUALIFICATION.

**§ 5. Election.**—One supervisor shall be chosen at the annual town meeting in each town,

1 R. S. 808.

by the electors of the town, who are to vote for him by ballot,

Id. 816.

The time for holding town meetings is not uniform throughout the State. It is generally fixed by the board of supervisors, by resolution, so that the town meetings of every town in the same county shall be held on the same day.

§ 15, chap. 889, Laws of 1839; 1 R. S. 815.

After being so fixed it cannot be changed for three successive years.

Id.

In Kings county it was attempted to change the time for electing supervisors and other officers to the general election day in the fall. Some doubts exist as to whether such change was properly made or is valid.

People, *ex rel.* Smith, v. Schiellain, 95 N. Y. 124.

Each ward in a city usually has one supervisor also, but the counties of New York and Kings act under special laws, and the general statement above does not apply to them.

**§ 6. What Qualifications a Supervisor must Possess.**—No person is eligible to the office unless he is an elector of the town for which he is chosen.

1 R. S. 817.

An elector must be a male citizen of the age of twenty-one years. He must have been a citizen for ten days, and an inhabitant of this State one year, next preceding an election, and for the last four

months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote.

Constitution, art. 2, § 1.

### § 7. What Offices a Supervisor may not Hold.

—No supervisor can be appointed or elected to hold the office of superintendent of the poor in any county.

Chap. 352, Laws of 1829, as amended by chap. 80, Laws of 1853; 3 R. S. 1869.

Nor appointed to or hold the office of county treasurer.

1 R. S. 363.

Nor trustee of a school district, nor member of a board of education.

2 R. S. 1163.

Nor commissioner for loaning the moneys of the United States.

1 R. S. 525.

Nor a loan officer appointed under the act of the 14th of March, 1792.

Id. 817.

In the above cases a supervisor is ineligible to election or appointment to said offices. If a supervisor is elected or appointed thereto the election or appointment is a nullity.

People v. Clute, 50 N. Y. 451.

But there is a number of cases in which a different question arises, *e. g.*, the charter of the city of Brooklyn says: "No alderman shall, during the term for which he is elected, *hold* any other public office." An alderman was elected to Congress. It was held that the office of *alderman* became vacant.

Thomas Kelly v. The Common Council of Brooklyn, 77 N. Y. 503.

So in People v. Nostrand, a highway commissioner was elected sheriff. Section 1, article 10 of the Constitution provides that sheriffs shall *hold* no other office. It was held that the election of the commissioner to be sheriff operated as a resignation of the office of commissioner.

Armstead C. Henry v. James Nostrand, 46 N. Y. 375.

So a school commissioner, if elected supervisor, vacates his office as commissioner.

2 R. S. 1144.

Illustrations of this principle may be found in

People v. Carrique, 2 Hill, 93; Van Orsdall v. Hazard, 3 Hill, 243-249; People v. Board of Police, etc., 35 Barb. 535-540, 541-553; Angell & Ames on Corp. 443; People v. Conklin, 7 Hun, 188-194; James Ryan v. Andrew H. Green, 58 N. Y. 295-304.

As boards of supervisors have jurisdiction to decide cases of contested membership, care must be used in examining the statute claimed to render a contestant eligible or ineligible. The above decisions will assist in a proper determination of the question.

**§ 8. Who are Ineligible.**—The loan commissioners above mentioned are not eligible to the office of supervisor.

1 R. S. 525, 817.

Nor a railroad commissioner of a town.

Chap. 720, Laws of 1878; 1 R. S. 879.

In some towns, by special statutes, the office of railroad commissioner is abolished, and their duties devolve upon the supervisors of such towns. These acts being local are omitted.

**§ 9. Penalty for Refusing to Serve.**—If any person chosen or appointed supervisor shall refuse to serve, he shall forfeit to the town the sum of \$50.

1 R. S. 819, § 25.

If any person, so chosen or appointed, shall not take and subscribe the oath of office, and cause the certificate mentioned below to be filed as required, such neglect shall be deemed a refusal to serve.

Id. 818, § 16.

**§ 10. Oath of Office.**—Before entering upon the duties of his office, and within ten days after he shall be notified of his election or appointment, every person chosen or appointed shall take and subscribe the oath of office.

Id. 817.

**§ 11. Form of Oath.**—The following oath will comply with the provisions of the law :

STATE OF NEW YORK, }  
COUNTY OF ONEIDA, } ss.:  
TOWN OF TRENTON, }

I, Thomas J. Lewis, of the town of Trenton, in said county, having been elected supervisor of said town, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of supervisor of said town, according to the best of my ability.

And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote.

THOMAS J. LEWIS.

Subscribed and sworn to before me, }  
this 6th day of March, 1886. }  
ROBERT PRICHARD, }  
Justice of the Peace. }

#### CERTIFICATE OF JUSTICE.

COUNTY OF ONEIDA, }  
TOWN OF TRENTON, } ss.:

I, Robert Prichard, justice of the peace in and for the town of Trenton, in said county (or town clerk of the town of Trenton, in said county), do hereby certify, that on the 6th day of March, 1886, personally appeared before me Thomas J. Lewis, of said town, who then and there duly took and subscribed the foregoing oath.

ROBERT PRICHARD,  
JUSTICE OF THE PEACE.



The Revised Statutes say that the form shall be that "prescribed in the *sixth* article of the Constitution of this State."

As the sixth article of the present Constitution does not prescribe any oath, but the twelfth article does, it is safer for an *elected* officer to follow the above form, which complies with the latter article.

1 R. S. 817; Constitution, art. 12.

In case of an appointment, the latter part of the oath may be omitted.

**§ 12. Before Whom Oath to be Taken.**—It may be taken before a justice of the peace or commissioner of deeds,

Id. 817.

or the town clerk of the town in which such officer shall be elected.

Chap. 172, Laws of 1838; 1 R. S. 820.

Notaries public were given the power to administer oaths and affirmations, in all cases where the same may be taken and administered by commissioners of deeds.

Chap. 360, Laws of 1859; 3 R. S. 2375.

By chapter 238 of 1840, the office of commissioner of deeds in towns was abolished.

Ellen O'Donnell v. Robert McIntyre, 37 Hun, 615-622; Craft v. Merrill, 14 N. Y. 456; The National Bank of Chemung v. City of Elmira, 53 id. 49.

There are decisions holding that the statutes designating persons before whom the oath shall be taken are merely directory.

*Ex parte* Heath & Broome, 3 Hill, 42; 4 E. D. Smith, 430; People v. Stowell, 9 Abb. N. C. 456-460.

**§ 13. Certificate.**—The officer taking the oath shall certify in writing the day and year when the same was taken, and shall deliver such certificate to the person by whom the oath was taken.

1 R. S. 818.

For form of certificate see *ante*, § 11.

No fee or reward is to be paid for administering the oath, or for the certificate.

Id.

**§ 14. Oath to be Filed.**—The supervisor taking the oath, within eight days thereafter, shall cause the certificate to be filed in the office of the town clerk.

Id. 818.

**§ 15. Penalty for Acting Without Taking Oath.**—If he enters upon the duties of his office before he shall have taken such oath, he shall forfeit to the town the sum of \$50.

Id. 820.

**§ 16. Notice to be Given Supervisor Elected.**—If his name appears on the poll list, that is to be deemed a sufficient notice of his election; but if not, he is entitled to a notice

of his election from the town clerk of the town, within ten days after the meeting at which he is chosen.

Id. 817.

**§ 17. Tenure of Office.**—Supervisors shall hold their office for one year, and until others are chosen in their places and have qualified.

Id. 820.

Local statutes, extending the terms of office to two years, have been passed for certain counties, but such statutes are unconstitutional

People v. Henry Hoffman, 60 How. Pr. 324; affirmed, 24 Hun, 142.

and contrary to article 3, section 18 of the Constitution.

**§ 18. If a Supervisor is not Chosen at Town Meeting, how Proceed.**—If any town shall omit or neglect, at its annual town meeting, to choose its proper town officers, or any of them, it shall be lawful for any three justices of the peace of said town, by a warrant under their hands and seals, within five days after such town meeting, to appoint such officer or officers; and the person or persons so appointed shall hold their respective offices until others are chosen or appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly chosen by the electors; but, if the justices of the peace fail to so appoint, it shall be the duty of the town clerk within thirty days thereafter, to call a special town meeting for the purpose of electing such officer or officers.

1 R. S. 821, as amended by chap. 543, Laws of 1874.

The justices making such appointment shall cause such warrant to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed.

Id.

The justices cannot appoint one of their own number.

People v. Thomas, 33 Barb. 287.

Should the electors omit, at their annual town meeting, to elect a supervisor — as in the case of a tie vote or otherwise — the justices may appoint a supervisor immediately without waiting for a special town meeting; and a person so appointed will be entitled to hold the office in preference to one elected at a special town meeting. A special town meeting can properly be called to elect a supervisor only where a *vacancy* occurs, after an officer has been duly chosen at the annual town meeting.

People v. Van Horne, 18 Wend. 515; Tappan v. Grey, 9 Paige, 507.

**§ 19. Vacancies, what are, how Filled.**—A vacancy in the office of supervisor may be supplied by a special town meeting to be called by the town clerk, within eight days after the

happening of such vacancy, upon the petition of twenty-five voters. If such call is not made, or the electors shall not, within fifteen days after the happening of such vacancy, supply the same by an election at town meeting, the same shall be supplied by the justices of the town.

1 R. S. 822, as amended by Laws of 1881, chap. 391, and chap. 267, Laws of 1885.

Three justices are necessary to make a valid appointment, but where there are less than three residing in a town wherein a vacancy occurs, the justice or justices residing in such town may associate with themselves one or more justices from an adjoining town as may be necessary to make the number of three.

Id.

When the justices appoint they are to appoint some person, other than one of their own number, by a warrant under their hands and seals, and are to cause such warrant to be forthwith filed in the office of the town clerk, who shall forthwith give notice to the person appointed.

Id.

A vacancy occurs when the supervisor chosen or appointed refuses to serve, dies, resigns, removes out of town, or becomes incapable of serving, or convicted of an infamous crime, or of any offense involving a violation of his office, or the decision of a competent tribunal declaring void his election or appointment, *after* he shall have been elected or appointed.

1 R. S. 370.

A special town meeting can properly be called to elect a supervisor *only* where a vacancy occurs *after* an officer has been duly chosen at the annual town meeting, or after he has been duly appointed by the justices.

People v. Van Horn and Himrod, 18 Wend. 515; 1 R. S. 822.

Where a supervisor, whose term has expired, continues to discharge the duties of the office, under the statute authorizing him to do so until his successor has qualified, the office is not vacant.

Tappan v. Grey, 9 Paige, 507.

Unless there is some special law governing the case and prescribing that a failure to elect causes a vacancy.

People v. Isaac W. Crissey, 91 N. Y. 616-634.

## § 20. Form of Order Appointing Supervisor.

### ORDER APPOINTING SUPERVISOR TO FILL VACANCY.

COUNTY OF RENSSELAER, }  
TOWN OF PITTSBURY, } ss..

WHEREAS, a vacancy has occurred in the office of supervisor of the town of Pittsburg, by reason of the death (*or as the case may be*) of George Holmes, heretofore elected to said office from said town,

Now, therefore, by virtue of the power vested in us by the statute, in such case made and provided, we, the undersigned, three of the justices of the peace of

said town (*or, in case there are less than three justices in the town, then one or two, as the case may be, and the balance of the justices of the peace of the adjoining town of* ), do hereby, in order to fill such vacancy, nominate and appoint Charles Adams to be supervisor of said town, to hold his said office until the next succeeding annual town meeting of said town, and until another is duly chosen or appointed in his place as prescribed by law.

In witness whereof we have hereto set our hands and seals this 10th day of July, 1869.

(Signatures and seals.)

JUSTICES OF THE PEACE.

**§ 21. Such Appointment cannot be Questioned Collaterally.**—Where the justices acquire jurisdiction their appointment cannot be questioned collaterally.

*Van Alen v. Vanderpool*, 6 Johns. 69; *People v. Seaman*, 5 Denio, 409; In the Matter of the Petition of Daniel R. Kendall to Vacate an Assessment, 85 N. Y. 302; *People v. Isaac W. Crissey*, 91 id. 616-635; *Giles Foot v. Alfred Stiles*, 57 id. 399.

**§ 22. Resignation of Office.**—Should any supervisor desire to resign his office, he may give notice of his intention so to do to any three justices of the peace of the town, who may, for sufficient cause shown, accept the resignation. Whenever the justices shall accept any such resignation, they shall forthwith give notice thereof to the town clerk of the town, and it then becomes his duty to call a special town meeting to supply the vacancy.

1 R. S. 822.

If the special town meeting be not called or held, then the justices appoint as above stated.

**§ 23. Supervisor Elected or Appointed to give Security.**

First. It is the duty of every supervisor hereafter elected, within thirty days after entering upon his office, to make and deliver to the town clerk of his town his bond, in such penalty and with such sureties as the board of town auditors shall prescribe, conditioned for the faithful discharge of his official duties, and that he will well and truly keep and pay over and account for all moneys belonging to his town and coming into his hands as such supervisor.

Chap. 534, Laws of 1866, as amended by chap. 721, Laws of 1868; 1 R. S. 827.

Second. **Bond for School Moneys.**—Immediately on receiving the commissioner's certificate of apportionment, the county treasurer shall require of each supervisor, and each supervisor shall give to the treasurer, in behalf of the town, his bond, with two or more sufficient sureties, approved by the treasurer, in the penalty of at least double the amount of the school moneys set apart or apportioned to the town, and of any such moneys unaccounted for by his

predecessor, conditioned for the faithful disbursement, safe-keeping and accounting for such moneys, and of all other school moneys that may come into his hands from any other source.

If the condition shall be broken the county treasurer shall sue the bond in his own name, in behalf of the town, and the money recovered shall be paid over to the successor of the supervisor in default, such successor having first given security as aforesaid.

Whenever the office of a supervisor shall become vacant by reason of the expiration of his term of service, or otherwise, the county treasurer shall require the person elected or appointed to fill such vacancy, to execute a bond, with two or more sureties, to be approved by the treasurer, in the penalty of at least double the sum of the school moneys remaining in the hands of the old supervisor, when the office became vacant, conditioned for the faithful disbursement, safe-keeping and accounting for such moneys. But the execution of this bond shall not relieve the supervisor from the duty of executing the bond first above mentioned.

### **Refusal to give Security a Misdemeanor.—**

The refusal of a supervisor to give such security shall be a misdemeanor, and any fine imposed, on his conviction thereof, shall be for the benefit of the common schools of the town. Upon such refusal the moneys so set apart and apportioned to the town shall be paid to and disbursed by some other officer or person to be designated by the county judge, under such regulations and with such safeguards as he may prescribe, and the reasonable compensation of such officer or person, to be adjusted by the board of supervisors, shall be a town charge.

§ 81, chap. 555, Laws of 1864, as amended by chap. 567, Laws of 1875; 2 R. S. 1153

On filing this bond the treasurer will give a certificate, showing this fact, for delivery to his predecessor in office.

Chap. 555, Laws of 1864, § 6, subd. 7.

**Third. Bonds on Account of Administering Funds for Railroad Indebtedness.**—By certain local acts the office of railroad commissioners in certain towns was abolished, as above mentioned, and the supervisor acts and has charge of the railroad funds. The following act requires him to give security therefor, and is only applicable to the towns or wards in which the supervisors administer such funds.

The supervisor of any town or ward of any city, receiving or disbursing any funds on account of the bonded railroad debt of said



town or ward, before receiving or disbursing any such funds, by virtue of an act of this State, shall execute to the town a bond with sureties, who shall be able to justify in at least double the amount of the money to be received by him as near as can be ascertained, said bond to be approved by the town clerk, and conditioned for the proper and due disbursement of moneys received on account of bonded railroad debt, and the faithful accounting thereof, which bond, when given, will be filed with the town clerk.

Chap. 68, Laws of 1882.

By chapter 410 of 1874, when the town shall have voted to buy and cancel its bonds, by issuing and selling new bonds, the supervisor is to give security for double the amount received by him from the county treasurer, derived from the sale of the new bonds.

The law in relation thereto will be found in chapter , *post*, and is only applicable to towns having a bonded indebtedness.

The sureties to the above bonds will be liable only for dereliction in duty during the term for which the supervisor was chosen at the time the obligation was entered into, and not for those which happen under his reappointment.

Kingston Mut. Ins. Co. v. Clark, 33 Barb. 196.

Sureties on a supervisor's bond are only liable for moneys which their principal is authorized and bound by law to receive in his official capacity, and not for that which he receives voluntarily, or which the board of supervisors without authority order paid to him. So where a town collector, in pursuance of his warrant, paid to the supervisor moneys collected for support of the poor and repair of highways, *held*, that the sureties were not liable for their principal's appropriation of those moneys, because it was the duty of the board to require them to be paid directly to the overseers of the poor and the commissioners of highways, respectively.

People v. Pennock, 60 N. Y. 421.

A bond to "H., town clerk," to be "paid to said town clerk or his successors in office," held sufficient,

Edmund G. Sutherland v. James Carr, 85 N. Y. 105.

and can be sued in the name of the supervisor of the town.

*Id.*

As to what funds he receives "as supervisor," officially, see cases cited in notes to this section.

The act above cited, chapter 534, Laws of 1866, speaks only of supervisors "elected," and makes no mention of those "appointed." It is the safer practice to require a bond of the one appointed, as well as the one elected.

This bond would seem to secure the town for all moneys received by the supervisor, "as supervisor," and to supersede the special bond for "local school moneys" required by chapter 78, Laws of 1866.

People v. Ebenezer Pennock, 60 N. Y. 421-424; Elijah P. Taylor v. Emory W. Gurnee, 26 Hun, 624; Charles A. Hawkins v. Mayor of New York City, 64 N. Y. 18-21; Edmund G. Sutherland v. James Carr, 85 id. 105.

The first act is general, is later in its enactment and covers the whole ground.

*Id.*; Charles Heckmann v. John M. Pinkney, 81 N. Y. 211; People v. City of Brooklyn, 69 id. 605; Dexter & Limerick Plankroad Co. v. Alden, 16 Barb. 15.

For reference, however, the latter act is inserted.

In addition to the bond or bonds that the supervisors of the several towns of this State are now by law required to execute, the supervisor of every town in this State, which has a local school fund belonging to said town, shall, before entering upon the duties of his office, execute a bond with two or more sufficient sureties in double the amount of all school moneys, funds or securities belonging to such town, and which by law is under the control, or in the custody of the supervisor of such town; such bond to be in accordance with the requirements of section 20 of chapter 179, Laws of 1856, and subject to all of the provisions thereof, except as herein specified.

Laws of 1866, chap. 78.

Chapter 179, Laws of 1856, has been superseded by chapter 555 of 1864, and the latter act provides for the duties of the supervisor relating to the "local school fund" (or "gospel and school lots funds"), and requires him to give a bond to the county treasurer, not only for moneys "apportioned" by the school commissioners, but for "all other school moneys that may come into his hands from *any other source*."

It would seem that the bond to the county treasurer and the general bond mentioned in the first subdivision of section 23, *supra*, would be sufficient to meet the requirements of the statutes, without giving the one mentioned in chapter 78, Laws of 1866.

## § 24. Form of Bonds or Security Required.

See *ante*, § 23, "first."

### BOND OF SUPERVISOR—(General).

Know all men by these presents, that we, Charles L. Marshall, as principal, and William J. Millard and Herbert C. Sholes, as sureties, all of the town of Paris, county of Oneida, and State of New York, are held and firmly bound unto John Doe, as town clerk of said town, in the penal sum of \$10,000, to be paid to the said Doe, as town clerk aforesaid, or to his successor in office. For which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this 12th day of March, 1886.

Whereas the above bounden, Charles L. Marshall, was, on the 5th day of March, 1886, duly elected supervisor of the town of Paris, in said county: \* Now, therefore, the condition of this bond is such, that if the said Marshall shall faithfully discharge his duties as such supervisor, and shall well and truly keep and account for and pay over all moneys belonging to his said town and coming into his hands, as such supervisor, without fraud or delay, then this obligation to be void, otherwise to be in full force and virtue.

CHARLES L. MARSHALL,	[L. S.]
WILLIAM J. MILLARD,	[L. S.]
HERBERT C. SHOLES.	[L. S.]

### ACKNOWLEDGMENT.

STATE OF NEW YORK, }  
COUNTY OF ONEIDA, } ss.:

On this 12th day of March, 1886, before me, the subscriber, personally appeared Charles L. Marshall, William J. Millard and Herbert C. Sholes, to me personally known to be the same persons described in and who executed the above instrument and severally acknowledged that they executed the same.

M. M. JONES,  
JUSTICE OF THE PEACE.

## JUSTIFICATION.

STATE OF NEW YORK, }  
COUNTY OF ONEIDA, } ss.:

William J. Millard and Herbert C. Sholes, the sureties named in the foregoing bond, being severally duly sworn, doth each for himself say, that he is a resident and freeholder (or householder) within this State, and worth \$10,000 over and above all his debts and liabilities, which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

Signed,

WILLIAM J. MILLARD,  
HERBERT C. SHOLES.

Severally sworn and subscribed before }  
me, this 12th day of March, 1886. }  
M. M. JONES,  
Justice of the Peace.

## APPROVAL.

We hereby approve the foregoing (or within) bond, as to its form and manner of execution and the sufficiency of the sureties therein.

Dated *March 12*, 1886.

A. B.,  
C. D.,  
E. F.,  
G. H.,

BOARD OF TOWN AUDITORS.

The above bond, when completed, is to be filed with the town clerk.

## BOND FOR SCHOOL MONEYS.

(See *ante*, § 23, "Second.")

Know all men by these presents, that we, Andrew L. Williams, supervisor of the town of Kirkland, in the county of Oneida, and State of New York, as principal, and George Beach and Jacob F. Getman, of the same town, as sureties, are held and firmly bound unto John R. Edwards, as treasurer of the county of Oneida, in the penalty of five thousand dollars, to be paid to the said Edwards, as treasurer of said county, his successor in office, attorney or assigns; to which payment, well and truly to be made, we bind ourselves, jointly and severally, by these presents. Sealed with our seals and dated this 10th day of June, 1886.

The condition of this obligation is such that if the above bounden Andrew L. Williams, as supervisor aforesaid, shall safely keep, faithfully disburse, and justly account for and pay over all the school moneys apportioned to said town, and all other school moneys that may come into his hands, as such supervisor, from any other source, then this obligation to be void; otherwise to remain in full force and virtue.

ANDREW L. WILLIAMS, [L. s.]  
GEORGE BEACH, [L. s.]  
JACOB F. GETMAN, [L. s.]

- [Add acknowledgment and justification, as in preceding form.]

The county treasurer approves the bond, if satisfactory, as follows:

I hereby approve the foregoing (or within) bond as to its form and manner of execution and the sufficiency of the sureties therein.

Dated *June* 11, 1886.

JOHN R. EDWARDS,

TREASURER OF ONEIDA COUNTY.

This bond is filed with the county treasurer, who should give the supervisor filing the same a certificate thereof.

Chap. 555, Laws of 1864, § 6, subd. 7.

From the preceding forms any other bond required can be adapted by a little care.

**§ 25. Qualifying, what is.**—To qualify for an office is to take and subscribe the oath of office.

People v. James H. McKinney, 52 N. Y. 374-380.

Generally speaking, after an officer has taken and subscribed his oath of office, filed the same and furnished the security required, he is "qualified" to perform the duties of the office.

## CHAPTER III.

### THE SUPERVISOR.

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|--|---|
| <p>Sec. 26. His duties and powers.<br/>27. Classification thereof.<br/>28. Demand and receive books, papers and moneys.<br/>29. Delivery refused.<br/>30. To whom application is made.<br/>31. Form for application.<br/>32. Order to show cause on application.<br/>33. Affidavit of delivery.<br/>34. Order thereupon.<br/>35. Warrant of arrest.<br/>36. Search warrant.<br/>37. To demand from his predecessor all school and town moneys.<br/>38. Keeping accounts.<br/>39. Form of account.<br/>40. Certificate by town auditors.<br/>41. When to account.<br/>42. Bonds of other town officers.<br/>43. Commissioners of highways.<br/>44. Collector.<br/>45. Constables.<br/>46. Justices of the peace.<br/>47. Excise commissioners.<br/>48. Overseers of the poor.<br/>49. Form of bonds of other town officers.<br/>50. Bond of collector.<br/>51. Bond of constables.<br/>52. Bond of justice of the peace.<br/>53. Bond of excise commissioners.<br/>54. Bond of overseer of the poor.<br/>54 a. Bond of railroad commissioners.<br/>55. Filing papers, bonds, etc.<br/>56. Reports by supervisor.<br/>57. In relation to rejected taxes.<br/>58. In relation to highway commissioner's statement.<br/>59. Report as to town debt.<br/>60. List of collectors and assessors.<br/>61. Sheep injured by dogs.<br/>62. List of grand jurors.<br/>63. Report to superintendent.<br/>64. Report paupers.<br/>65. To make a return of moneys in their hands.<br/>66. State boundary monuments.<br/>67. Account of school moneys.<br/>68. To the comptroller.<br/>69. Suits against the town.<br/>70. As to town debt.<br/>71. As to common school districts.<br/>72. Supervisors' duties in relation to.<br/>73. When town divided.<br/>74. Moneys in the hands of overseers of the poor.<br/>75. Disbursing of and accounts for school moneys.<br/>76. Alteration of school districts.</p> | <p>Sec. 77. Form of order forming a district.<br/>78. Form of consent by trustee.<br/>79. Form of order altering a district.<br/>80. Form of decision thereupon.<br/>81. On the dissolution of a district.<br/>82. Equalizing taxes on lands in several towns.<br/>83. Site of school-house, how changed.<br/>84. To condemn unfit school-houses.<br/>85. When supervisor to fill vacancy in office.<br/>86. Form of order appointing trustee.<br/>87. Supervisor may accept resignation of trustee.<br/>88. Supervisor may consent to renewal of warrant for school tax.<br/>89. Form of renewal.<br/>90. To sue trustees for penalties.<br/>91. Duty of town clerk.<br/>92. Supervisor to sue for penalties imposed by laws relating to schools.<br/>93. Certificate of apportionment of school moneys.<br/>94. Duty of supervisor.<br/>95. Embezzlement of moneys by supervisors.<br/>96. Supervisor to call district school meeting when.<br/>97. Notice to be given thereof.<br/>98. Apportionment of valuation of railroads among school districts.<br/>99. Women eligible to vote at school meeting.<br/>100. Under compulsory education act.<br/>101. Supervisor may receive real estate or personal estate in trust.<br/>102. In respect to dogs.<br/>103. The Ontario county act.<br/>104. The Richmond county act.<br/>105. Deaf-mutes and blind.<br/>106. Form for the admission of county pupils.<br/>107. As to the blind.<br/>108. To cause survey to be made.<br/>109. Survey of non-resident lands.<br/>110. May administer oaths.<br/>111. Surplus moneys.<br/>112. To receive moneys for strays.<br/>113. When to act as guardian, in binding out orphan children.<br/>114. As to buying and canceling town bonds.<br/>115. As to payment of bonded debt of railroads.</p> |
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- Sec. 116. Sale of stock and bonds of bankrupt railroads.
117. To supply vacancy in office of auditor.
118. Attend board of supervisors.
119. Duties under the drainage act.
120. Supervisors to appoint inspectors of vinegar.
121. When supervisor to pay judgment.
122. Sue for penalties.
123. Supervisor may institute supplementary proceedings for tax.
124. Form of affidavit therefor.
- 124 a. Order thereon.
125. Duties in connection with town officers.
- 126-128. Duties on the division of a town.
129. Personal property, how apportioned.
130. Meeting under this title, how called.
131. Cemeteries excepted.
132. Debts to be apportioned.
133. Gospel and school lots.
134. Duty in case of fire in woods.
- 135-140. Duties in connection with highway commissioner.
141. Powers and duties as water commissioner.
142. To control town house.
143. To lease public buildings to grand army post.
- Sec. 144. To appoint town sealer.
145. To appoint fireman.
146. To appoint collector.
147. Vacancies in board of excise.
148. Certain towns and cities authorized to sell railroad stock.
- 149-150. Duty in connection with justices and town clerk.
151. To supply vacancies in inspectors of election.
152. Duties as board of health.
153. Duties as board of town auditors.
154. When to act as inspector at a village election.
155. To make jury lists.
156. In cities.
157. Who are disqualified from serving as jurors.
158. Who are entitled to exemption from jury duty.
159. Who are qualified to serve as jurors.
160. Duplicate lists of jurors selected to be filed.
161. Form of list.
162. Jurors to serve three years.
163. Duties as board of health.
164. Formation of water-works company.
165. In relation to roads and bridges.
166. Form for consent.
167. Meeting to determine what amount shall be borrowed.

**§ 26. Duties and Powers.**—After a supervisor has duly qualified he is ready to proceed with the duties of his office.

He derives his right to act as a public officer from statutes enacted by the legislature, which expressly, or by necessary implication, limit, define and prescribe what he may lawfully do.

Within such limits so conferred his jurisdiction is confined.

If he attempts to go beyond this jurisdiction he does so at his peril, and becomes personally responsible therefor.

**§ 27. Classification.**—The jurisdiction of a supervisor extends to these cases :

First. As a town officer.

Second. As a member of the board of county canvassers.

Third. As a county officer, or sitting as a member of the board of supervisors.

The first class is naturally divided into three subdivisions, viz. :

1. Those that are to be performed by the supervisor only.

2. Those that are to be performed by him in connection with other town officers.

3. Certain general duties relating to such matters as the schools, dogs, etc., which belong to both of these subdivisions.

## HIS DUTIES AS A TOWN OFFICER.

1. *To be performed by the supervisor.*

**§ 28. To Demand and Receive Books, Papers and Moneys from his Predecessor.**—He must demand from his predecessor all the records, books, papers and the balance of moneys remaining in his hands, as ascertained by the auditors of town accounts. If he desires, it is the duty of his predecessor to make oath that the same are all the records, etc., in his hands. The following is a statement of the law :

At the expiration of the term of office of a supervisor, it is the duty of his successor, immediately after he shall have entered upon his duties, to demand of his predecessor all the records, books and papers under his control belonging to such office, and it is the duty of such supervisor to deliver, when so requested, upon oath, to his successor, all such books and papers, and to pay over the balance of moneys remaining in his hands as ascertained by the auditors of town accounts.

1 R. S. 842.

The oath may be administered by the officer to whom such delivery is made.

Id.

In case of the death of such supervisor he shall make such demand of the executors or administrators of such deceased officer ; it is made the duty of his executors or administrators to make such delivery upon like oath.

Id. ; Id. 376.

On receiving such records, etc., he should give his predecessor a receipt, which may be in the following form :

Received of F. A. Willard, late supervisor of the town of Boonville, three hundred dollars and five cents (\$300.05), the balance of town moneys remaining in his hands.

Also vouchers No.        to No.       , both inclusive, in support of his charges for disbursements, bearing the same number in his cash account, and amounting in the aggregate to the sum of        dollars and        cents.

Also one (or more as the case may be) bound account book, one copy Thompson's Supervisor's Manual (and so on with each book or other property in his custody as supervisor).

Dated March 15, 1886.

T. A. LOWERY,  
SUPERVISOR OF THE TOWN OF BOONVILLE.

**§ 29. If delivery refused.**—It shall be the duty of the officers entitled to demand such records, books and papers to proceed to compel the delivery thereof.

1 R. S. 842, § 9; *Id.* 376, § 51 *et seq.*

The proceedings to compel the delivery of books and papers by public officers to their successors are authorized by the Revised Statutes.

*Id.* 376.

The title to office cannot be determined by these proceedings.

*Matter of North v. Cary*, 4 T. & C. 357; *In the Matter of Whiting*, 2 Barb. 514; *People v. James Allen*, 51 How. 97; *Hodgkin v. A. & P. R. R. Co.*, 5 Abb. 73; 16 Abb. N. C. 269-272.

The applicant's title to the office must be clear and free from reasonable doubt to entitle him to institute these proceedings.

2 Cary's Special Proc. 206; *People v. Allen*, 51 How. 97-99; 16 Abb. N. C. 269-272; *In re Application of Benjamin Case v. Andrew Campbell*, to compel delivery of books, 17 N. Y. W. Dig. 473; *Matter of North v. Cary*, 4 T. & C. 357.

But it is sufficient if the applicant is in possession of the office under color of title, though if both parties claim to be in possession, and it is doubtful which is the actual occupant, the court will require the parties to have the right to the office determined by action before entertaining the proceeding.

*In the Matter of Conover v. Devlin*, 24 Barb. 587; *Conover v. Devlin*, 15 How. 470; *Conover's Case*, 5 Abb. 74-281.

**§ 30. To Whom Application is Made.**—The application is made to a justice of the supreme court or the county judge of the county where the person so refusing shall reside.

1 R. S. 376.

And if such officer shall be satisfied, from testimony offered, that any such books or papers are withheld, he shall grant an order directing the person so refusing to show cause before him, within some short and reasonable time, why he should not be compelled to deliver the same.

*Id.*

### **§ 31. Form for Application.**

<p>1 In the Matter of the Application of D. D. C. to Compel Delivery of Books and Papers.</p>
---

To Hon. W. B. SUTTON, COUNTY JUDGE OF ONEIDA COUNTY:

The petition of D. D. C., above named, respectfully shows that on March 5, 1885, one J. S. T. was duly elected to the office of supervisor of the town of Deerfield, in said county, to serve for one year from said date, and duly qualified therefor and took possession of said office and of the records, books and



papers hereinafter mentioned, and continued in possession thereof till June 9, 1885, when he died.

- 2 That your petitioner was, on the 12th day of July, 1885, duly appointed to fill the vacancy in said office caused by the death of said T., and has duly taken and subscribed the oath of office, duly filed the same in the town clerk's office of said town, and duly furnished the security, and duly qualified himself as supervisor of said town as required by law, and since said July 12, 1885, has been and now is the supervisor of said town.

That, by virtue of said appointment, and the other acts above set forth, your petitioner is the successor to said T. in said office, and entitled to possession of the records, books and papers heretofore in the possession or under the control of said T. belonging to or appertaining to said office. That the said records, books and papers belonging and appertaining to said office, to-wit: (*describe the property*), have come to and are now in the possession of C. D.; that said C. D. has not been elected or appointed supervisor of said town, and does not claim to be such.

- 3 That on the            day of           , 1885, your petitioner duly demanded said records, books and papers of said C. D., who thereupon refused to deliver the same, or any of them, to him. That said C. D. now is, and for a year last past has been, a resident of Oneida county. That no previous application for the order herein asked for has been made herein.

Wherefore, your petitioner demands that the said C. D. be ordered to show cause before your honor why he, the said C. D., should not be compelled to deliver said records, books and papers to your petitioner, and why your petitioner should not have such further or other relief or order as may be proper.

Dated August 1, 1885.

D. D. C.

ONEIDA COUNTY, ss.:

D. D. C., being duly sworn, says: That he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

D. D. C.

Sworn to before me, this 1st  
day of August, 1885.  
JOHN DOE,  
Justice of the Peace.

If any of the allegations in the above petition are upon information and belief, it would be safer to attach the affidavit of some person who knows the facts in relation thereto. If such person will not make the affidavit, then allege the sources of the petitioner's information, and the grounds for his belief, and the reason why the informant's affidavit is not given.

## § 32. Order to Show Cause on Application.

(Title substantially as in the last form.)

On reading and filing the petition of D. D. C., dated August 1, 1885 (and specifying other papers relied on, if any), and being satisfied by the oath of said petitioner and other testimony offered, that the records, books and papers mentioned in said petition are unlawfully withheld, on motion of W. A. Matteson, Esq., attorney for said petitioner, it is hereby

Ordered, that said C. D. show cause before me at my chambers in the city of Utica, N. Y., on the 10th day of August, 1885, at ten o'clock in the forenoon of that day, why he should not be compelled to deliver the records, books and papers mentioned in said petition to said D. D. C., and why said D. D. C. should not have such other and further relief as may be just. Let a copy of this order and the papers on which the same is granted be served on said C. D. personally, on or before August 5, 1885.

Dated August 1, 1885.

W. B. SUTTON,  
ONEIDA COUNTY JUDGE.

If, upon an inquiry before said officer, the person charged with withholding such books or papers shall make affidavit that he has truly delivered over to his successor all such books and papers in his custody or appertaining to his office, within his knowledge, all further proceedings before such officer shall cease, and the person complained of shall be discharged. If he does not make such oath, then the officer shall, by warrant, commit such person to the jail of the county, there to remain until he shall deliver such books and papers, or be otherwise discharged according to law.

1 R. S. 376.

The following forms may be used therefor :

### § 33. Affidavit of Delivery.

STATE OF NEW YORK, }  
COUNTY OF ONEIDA, } ss.:

C. D., of said county, being duly sworn, says, that he is the person mentioned and described in a certain petition and complaint made by one D. D. C. before the Hon. W. B. Sutton, county judge, on the 1st day of August, 1885, and that he has truly delivered over to said D. D. C. all the books, records and papers in his custody or appertaining to said office of supervisor of the town of Deerfield in said county, within his knowledge.

C. D.

Sworn, etc.

If such affidavit be made, the proceedings cease. If it is not made, and after investigation the judge is satisfied that the papers are unlawfully withheld, an order is usually made in the following form :

### § 34. Order thereupon.

(Title substantially as in the preceding form, § 31.)

WHEREAS, on the 1st day of August, 1885, at my chambers in Utica, N. Y., complaint was made to the undersigned, county judge of Oneida county, by D. D. C., of which the following is a copy, to-wit (*here insert the petition, or a summary of its contents*); and,

WHEREAS, being satisfied by the oath of said D. D. C. that the records, books and papers mentioned in said petition or complaint, dated August 1, 1885, were unlawfully withheld, and that said C. D. resides in Oneida county, I granted an order directing said C. D. to show cause before me, on August 10, 1885, at my chambers, why he should not be compelled to deliver said records, books and papers to said D. D. C., and for such other and further relief as may be just, and at the time and place so appointed, said D. D. C. and said C. D. appeared before me, and due proof having been made of the service of said order, petition and all papers accompanying the same, I proceeded to inquire into the circumstances, which inquiry was continued before me from day to day until this day, the matter having been regularly adjourned, and said C. D. not having made oath that he has truly delivered to said D. D. C. the said books, papers and records, and it appearing that said D. D. C. is the successor to said office of supervisor of the town of Deerfield, and that said records, books and papers are still unlawfully withheld, and that said C. D. still omits and refuses to deliver up the same (\*), now after hearing W. A. Matteson, Esq., attorney for said D. D. C., in favor, and D. C. Stoddard, Esq., attorney for said C. D. in opposition thereto, it is hereby

Ordered, that said C. D. forthwith deliver to said D. D. C. all the records, books and papers belonging or appertaining to the office of supervisor of said town of Deerfield, to-wit: (*here enumerate and describe the several records, books and papers*), which have come to the hands of, in possession of or under the control of said C. D., or in default thereof, that a warrant issue to the sheriff of the county of Oneida to commit said C. D. to the jail of said county, therein to remain until he deliver to said D. D. C. said records, books and papers, to-wit: (*here enumerate as before*) or be otherwise discharged according to law.

And the same being required by said D. D. C., it is further

Ordered, that, on such default being made by said C. D., a search warrant issue to said sheriff or any constable of said county, commanding him to search, in the day-time, the house of said C. D. situated (*insert a particular designation or description of said house, and of any other place to be searched*), for said records, books and papers, to-wit: (*here insert a particular description of the articles*) so withheld, and seize and bring them before the undersigned.

Dated August 15, 1885.

W. B. SUTTON,  
ONEIDA COUNTY JUDGE.

If default be made in obeying the order after service of a copy thereof on the person so withholding, a warrant and search warrant in the following form issue:

### § 35. Warrant of Arrest.

THE PEOPLE OF THE STATE OF NEW YORK TO THE SHERIFF OF ONEIDA COUNTY:

WHEREAS (*recite the proceedings as in the last form to the asterisk \**).

These presents are, therefore, to command you, the sheriff of Oneida county, and you are hereby commanded to take the body of said C. D. and commit him to the jail of Oneida county, there to remain until he shall deliver the following records, books and papers, to-wit: (*here insert a particular description of the records, books and papers*) or be otherwise discharged according to law.

In witness whereof I have hereunto set my hand and seal, at my chambers in Utica, N. Y., this 18th day of August, 1885.

W. B. SUTTON, [L. s.]  
ONEIDA COUNTY JUDGE.

### § 36. Search Warrant.

THE PEOPLE OF THE STATE OF NEW YORK TO THE SHERIFF, OR ANY CONSTABLE OF ONEIDA COUNTY:

WHEREAS (*recite proceedings to the asterisk (\*) as in the second form above*), and said D. D. C. having further required a search warrant to be issued, you, the said sheriff of Oneida county, and any constable of said county, are hereby further commanded to search, in the day-time, the house of said C. D., situated (*insert a particular designation or description of said house and of any other place to be searched*) for said records, books and papers, to-wit: (*here insert a particular description of the same*) and seize and bring them before the undersigned.

In witness whereof, I have hereunto set my hand and seal, at my chambers in Utica, N. Y., this 18th day of August, 1885.

W. B. SUTTON, [L. s.]  
ONEIDA COUNTY JUDGE.

**§ 37. To Demand from his Predecessor and other Town Officers all School and Town Moneys.**—It is his duty, so soon as the bond to the county treasurer, by the third article of the third title of this act required, shall

have been given by him and approved by the treasurer, to deliver to his predecessor the treasurer's certificate of these facts, to procure from the town clerk a copy of his predecessor's account, and to demand and receive from him any and all school moneys remaining in his hands.

2 R. S. 1155, § 6, subd. 7; chap. 555, Laws of 1864.

The bond referred to is the same mentioned in section 23 "Second," *ante*. Furnished with the treasurer's certificate and a certified copy of his predecessor's account from the town clerk, he is then entitled to demand and receive all school moneys.

Unless this certificate be produced the moneys should not be paid to him by his predecessor, nor should he pay these moneys to his successor when his term of office expires. It is his duty, upon receiving such a certificate from his successor, *and not before*, to pay him all school moneys remaining in his hands, and to forthwith *file the certificate* in the town clerk's office.

*Id.*, subd. 8.

**§ 38. Keeping Accounts.**—Having received the books, and it being his duty to receive and pay out the town and school moneys, it is necessary for him to keep proper accounts thereof.

The supervisor of each town shall receive and pay over all moneys raised therein for defraying town charges, except those raised for the support of highways and bridges, of common schools, and of the poor where poor money shall be raised.

1 R. S. 826.

He shall keep a just and true account of the receipt and expenditure of all moneys which shall come into his hands by virtue of his office, in a book to be prepared for that purpose, at the expense of the town, and to be delivered to his successor in office.

*Id.*

In addition to the above, which relates to town charges, it is his duty to keep a just and true account of all the school moneys received and disbursed by him during each year, and to lay the same, with proper vouchers, before the board of town auditors at each annual meeting thereof.

Chap. 555, Laws of 1864; 2 R. S. 1155, § 6, subd. 4.

To have a bound blank book (the cost of which shall be a town charge), and to enter therein all his receipts and disbursements of school moneys, specifying from whom and for what purposes they

were received, and to whom and for what purposes they were paid out, and to deliver the book to his successor in office.

Id., subd. 5.

Within fifteen days after the determination of his office, to make out a just and true account of all school moneys theretofore received by him, and of all disbursements thereof, and to deliver the same to the town clerk, to be filed and recorded, and to notify his successor in office of such rendition and filing.

Id., subd. 6.

The accounts and book last above mentioned (subds. 4, 5 and 6) are based upon his duties in relation to common schools. The law pertaining thereto is as follows :

It is the duty of every supervisor to disburse the school moneys in his hands applicable to the payment of teachers' wages upon, and only upon, the written orders of a sole trustee, or of a majority of the trustees in favor of qualified teachers, or upon the order of a trustee of a separate neighborhood, in favor of any teacher of a school in an adjoining State, recognized by him and patronized by the inhabitants of such neighborhood. Such teacher shall be deemed a qualified teacher.

Id., subd. 1.

To disburse the library moneys upon, and only upon, the written orders of a sole trustee, or a majority of the trustees.

Id., subd. 2.

In the case of a union free school district, to pay over all the school money apportioned thereto, whether for the payment of teachers' wages or as library moneys, to the treasurer of such district, upon the order of its board of education.

Id., subd. 3.

If the order is regular upon its face, that is to say, if it bears the signatures of a majority of the persons acting in fact as trustees of a district, under color of an election, in favor of a person whom it states to be a duly qualified teacher, employed by them in the district during the year in which it is drawn, and in payment of his wages as such teacher, it is a sufficient voucher for the supervisor, and it is not for him to inquire whether the trustees have exceeded their authority or acted improperly in drawing the order. If presented by any other person than the teacher in whose favor it is drawn, it should bear his written indorsement or order for payment to a specified person.

**§ 39. Form of Account.**—The following form is in use in many towns, and will be sufficient for general purposes :

THOMAS J. LEWIS, SUPERVISOR, in account with the town of Trenton.

POOR FUND.

1885.		<i>Dr.</i>	<i>Cr.</i>
March 19.	To amount received from L. G. W., late supervisor,	\$546 93	
May 4.	To cash from H. H., excise commissioner.....	390 00	
June 1.	To cash from H. H., excise commissioner.....	27 50	
	To cash transferred from dog fund .....	23 50	
		<u>\$987 93</u>	

CONTRA.

1885.			
March 27.	By cash paid H. B., overseer of poor, voucher No. 1,	\$75 00	
April 21.	By cash paid R. W., overseer of poor, voucher No. 2,	30 00	
Sept. 11.	By cash paid H. B., overseer of poor, voucher No. 3,	75 00	
	30. By cash paid R. W., overseer of poor, voucher No. 4,	40 00	
Oct. 29.	By cash paid H. B., overseer of poor, voucher No. 5,	50 00	
1886.			
Feb. 15.	By cash paid R. W., overseer of poor, voucher No. 6,	30 00	
	By balance on hand.....	687 93	
		<u>\$987 93</u>	<u>\$987 93</u>
March 1.	To balance on hand .....		<u>\$687 93</u>

LOCAL SCHOOL FUND.

1885.		<i>Dr.</i>	<i>Cr.</i>
Feb. 22.	To amount of said fund received of L. G. W., late supervisor.....	\$353 00	
	To interest thereon one year.....	21 18	
		<u>\$374 18</u>	

1886.

CONTRA.

Feb. 22.	By paid school district No. 1 (voucher No. 8).....	\$5 00	
	By paid school district No. 2 (voucher No. 9).....	15 00	
	By paid school district No. 3 (voucher No. 10).....	1 18	
	By balance on hand, invested in a mortgage dated February 1, 1885, made by J. D. and wife on real estate in said town for.....	353 00	
		<u>\$374 18</u>	<u>\$374 18</u>
	To balance .....	<u>\$353 00</u>	

DOG FUND.

1885.		<i>Dr.</i>	<i>Cr.</i>
Mar. 9.	To cash from L. G. W., late supervisor.....	\$80 00	
1886.			
Feb. 20.	To cash from W. M., collector.....	85 00	
		<u>\$165 00</u>	

# THE SUPERVISOR.

25

1885.		CONTRA.	Cr
Nov.	5.	By cash paid H. M. (voucher No. 74).....	\$23 75
Nov.	5.	By cash paid C. W. (voucher No. 75).....	25 00
Nov.	5.	By cash paid J. B. J. (voucher No. 76).....	2 00
Nov.	5.	By cash paid E. O. (voucher No. 73).....	5 75
1886.			
Feb.	22.	By cash paid poor fund.....	23 50
		By balance on hand .....	85 05
			<hr/>
			\$165 00
			<hr/>
			\$165 00
			<hr/>
1886.			
Mar.	1.	To balance on hand  .....	\$85 05
			<hr/>

And so on with each fund.

The account book pertaining to school moneys contains two classes of accounts, viz.:

1st. The general account.

2d. The account with each school district in town, and is in the following form :

(Under the first head, viz.):

The SUPERVISOR of the town of Trenton, in account with said town.

SCHOOL MONIES.

Dr.

Date.	From whom received.	For what purpose.	Amount.	Date.	To whom paid.	For what purpose.	Voucher No.	Amount.

(Filing the blank columns as before.)

This also with the proper vouchers is laid before the town auditors.

(Under the second head, viz.:)

The SUPERVISOR of Florence, in account with the trustees of school district No. 1

Date.	From whom received.	For what purpose.	Amount.	Date.	To whom paid.	For what purpose.	Voucher No.	Amount.

(Filing the blank columns as before.)

This also, with the proper vouchers, is laid before the town auditors.

Within fifteen days after his term of office expires he must file a copy of the last two accounts with the town clerk and notify his successor thereof.



On the accounting before the town auditors the supervisor will need,

1st. The account books.

2d. A transcript or copy of his account upon said books, to be filed with the town clerk after the account has been audited. (This is sometimes put into the form of a report by the supervisor and read at town meeting.)

3d. The vouchers showing his disbursements to be filed with the town clerk. It would be more convenient on an accounting to number each voucher consecutively, and to note on each item of disbursement in the account the number of the corresponding voucher. After his account has been audited the auditors enter a certificate thereof in the books and also upon the copy to be filed.

## § 40. Certificate by Town Auditors as to Account of Supervisor.

TOWN OF FLORENCE, ss.:

We, the undersigned, board of town auditors in and for said town, do hereby certify that we have this day examined the foregoing account of Humphrey Courtney, supervisor of said town, and the vouchers accompanying the same, and do find the same true and correct in all respects, and that the following is a statement of his account with said town, to-wit:

	Receipts.	Disbursements	On hand.
Poor fund.....	\$987 93	\$300 00	\$687 93
Dog fund.....	165 05	80 00	85 05
School moneys.....	2,020 78	2,020 78	
Local school fund.....	374 18	21 18	353 00
	\$3,547 94	\$2,421 96	\$1,125 98

Leaving a balance on hand belonging to said town of \$1,125.98.

Dated *March 6*, 1886.

A. B.,

C. D.,

E. F.,

JUSTICES OF THE PEACE.

G. H.,

TOWN CLERK.

1 R. S. 827.

See *post*, Auditing of Accounts.

**§ 41. When to Account.**—On Tuesday preceding the annual town meeting he shall account with the justices of the peace and town clerk of the town for the disbursement of all moneys received by him.

Id. 826.

The account should be verified. No account shall be audited by any board of town auditors, or supervisors, or superintendents of the poor, for any services or disbursements, unless such account shall be made out in items and accompanied with an affidavit at-

tached to, and to be filed with, such account, made by the person presenting or claiming the same, that the items of such account are correct, and that the disbursements and services charged therein have been in fact made or rendered, or necessary to be made or rendered at that session of the board, and stating that no part thereof has been paid or satisfied; and the chairman of such board, or either of said superintendents, is hereby authorized to administer any oath required under this section.

§ 24, chap. 180, Laws of 1845, as amended in 1847; 1 R. S. 845.

**§ 42. Bonds of other Town Officers.**—The following officers are required to give bonds for the proper performance of their duties :

1. Highway commissioners.
2. Collector.
3. Constables.
4. Justices of the peace.
5. Excise commissioners.
6. Overseers of the poor.
7. Railroad commissioners.
8. Officers issuing bonds to retire or pay town debts.

See § 59, chap. 316, Laws of 1886.

And the supervisor should see that the bonds are given, that they are correct in form, properly executed and acknowledged, that the sureties justify and are of sufficient means to answer for any deficiency in the officer's accounts or duties, and he should approve and file them as required by law. The law pertaining thereto is as follows :

**§ 43. Commissioners of Highways.**—Every commissioner of highways hereafter to be elected or appointed shall, before entering upon his duties, and within ten days after notice of his election or appointment, execute to the supervisor of his town a bond, with two sureties, to be approved by the supervisor by an indorsement thereon, and filed with him, in the penal sum of \$1,000, conditioned that he will faithfully discharge his duties as such commissioner, and, within ten days after the expiration of his term of office, pay over to his successor what money may be remaining in his hands as such commissioner, and render to such successor a true account of all moneys received and paid out by him as such commissioner.

1 R. S. 844, § 3.

**§ 44. Collector.**—Every person chosen or appointed to the office of collector, before he enters on the duties of his office, and within eight days after he receives notice of the amount of the taxes to be collected by him, shall execute to the supervisor of the town, and lodge with him a bond, with one or more sureties, to be approved of by such supervisor, in double the amount of such taxes, conditioned for the faithful execution of his duties as collector.

Id. 818, § 19.

The collector must have *actual* notice of the amount of taxes to be collected.

52 N. Y. 374.

He is not bound to take notice of the proceedings fixing the amount of the tax.

Id.

Although the collector must qualify, by taking and subscribing the oath of office, no time is prescribed for taking such oath, and if taken at any time before the office is forfeited by reason of the neglect to give the bond, as required by statute, it is sufficient.

Id.

**§ 45. Constable.**—Every person chosen or appointed to the office of constable, before he enters on the duties of his office, and within eight days after he shall be notified of his election or appointment, shall take and subscribe the oath of office provided by the Constitution, and shall execute in the presence of the supervisor or town clerk of the town, with at least two sufficient sureties, to be approved of by such supervisor or town clerk, an instrument in writing, by which such constable and his sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay on account of any execution which shall be delivered to him for collection; and shall also jointly and severally agree and become liable to pay each and every such person for any damages which he may sustain from or by any act or thing done by said constable by virtue of his office of constable.

Id. 819, as amended by chap. 788, Laws of 1872, § 21.

The supervisor or town clerk shall indorse on such instrument his approbation of the sureties therein named, and shall then cause the same to be filed in the office of the town clerk.

1 R. S. 819, § 22.

**§ 46. Justices of the Peace.**—Every justice of the peace elected or appointed in any of the towns or cities of this State shall, before he enters upon the duties of his office, execute an instrument in writing, with two sureties, to be approved by the supervisor

of the town, or the town clerk thereof where the said justice of the peace is also supervisor of said town, or the common council of the city in which such justice shall reside, conditioned that he will pay over, on demand, to the officer, person or persons entitled to the same, all moneys received by him by virtue of his office, and previous to entering upon the discharge of his official duties, shall file the said instrument in the office of the clerk of the city or town in which he shall reside. Every such justice of the peace shall, at or before the time of presenting himself to be sworn into office, file with the county clerk a certificate of the clerk of the city or town in which such justice of the peace resides, that he has filed the bond required by this section, and no justice of the peace shall be sworn into office until he shall have filed such certificate as aforesaid.

Laws of 1878, chap. 107, as amended by chap. 367 of same year, and Laws of 1881, chap. 122; 1 R. S. 821.

This act does not apply to New York county or to those cities whose charters require these officers to give such bonds.

1 R. S. 821.

**§ 47. Excise Commissioners.**—The excise commissioners shall execute a bond to the supervisor, to be approved by him, in double the amount of the excise moneys of the preceding year, conditioned for paying over to him or his immediate successor in office, within thirty days after the receipt thereof, all moneys received by them as such excise commissioners. Where no moneys have been received for licenses during the preceding year, said bonds shall be executed in the penal sum of \$1,000.

Chap. 444, Laws of 1874, section 2, as amended by chap. 459, Laws of 1886; 3 R. S. 1991.

Richmond county is exempt therefrom.

Id.

**§ 48. Overseers of the Poor.—Bond of Overseer of Poor.**—Every person hereafter elected or appointed to the office of overseer of the poor in the several towns of this State, within ten days after being notified of his election or appointment, shall execute to the supervisor of the town a bond, with one or more sureties, to be approved by such supervisor, conditioned that he will faithfully discharge the duties of his office, and will pay, according to law, all moneys which shall come into his hands as such overseer.

Such bond, with the approval of the supervisor indorsed thereon, shall, within five days thereafter, be filed in the office of the town clerk of such town.

Chap. 269, Laws of 1855; 3 R. S. 1876.

## § 49. Form of Bonds of Other Town Officers.

### BOND OF HIGHWAY COMMISSIONERS.

Know all men by these presents, that we, A. B., as principal, C. D. and E. F., as sureties of the town of Bethlehem, in the county of Albany, and State of New York, are held and firmly bound unto G. H., as supervisor of said town, in the penal sum of \$1,000, to be paid to the said supervisor, or to his successor in office. For which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated August 30, 1869.\*

WHEREAS, the above-named bounden, A. B., was on the 9th day of March, 1869, duly elected commissioner of highways of the town of Bethlehem, in the county of Albany,

Now, therefore, the condition of this bond is such that, if the said A. B. shall faithfully discharge the duties of his office as such commissioner, and shall, within ten days after the expiration of his term of office, pay over to his successor all moneys remaining in his hands as such commissioner, and render to such successor a true account of all moneys received and paid out by him as such commissioner, without fraud or delay, then this obligation to be void, otherwise to be of full force and virtue.

A. B.,	[L. s.]
C. D.,	[L. s.]
E. F.	[L. s.]

[Add acknowledgment and justification as in section 24, and an approval by supervisor as follows:]

### APPROVAL BY SUPERVISOR.

I hereby approve the foregoing bond, as to its form and manner of execution and the sufficiency of the sureties thereon.

Dated *August 31*, 1869.

G. H.,  
SUPERVISOR.

This bond is to be filed with the supervisor within ten days after notice of his election or appointment.

## § 50. Bond of Collector.

[As in preceding form to the asterisk (\*) inserting as penalty double the amount of taxes named in warrant, and then continue as follows:]

The condition of this obligation is such, that if the said who has been duly chosen or appointed to the office of collector of the town aforesaid, shall well and faithfully execute his duties as such collector, pay over all moneys received by, and account in the manner and within the time required by law for all taxes upon the assessment-roll of said town delivered to him for the current year, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signatures and seals.)

[Add acknowledgment and justification as in section 24, *ante.*]  
[Add approval of supervisor as in preceding form.]

This bond is to be filed within six days thereafter, by the supervisor (*after he has approved the same*), in the county clerk's office.

## § 51. Bond of Constable.

Know all men by these presents, that we, A. B., chosen a constable in the town of \_\_\_\_\_, in the county of \_\_\_\_\_, as principal, and C. D. and E. F., as

sureties, do hereby jointly and severally agree to pay to each and every person who may be entitled thereto all such sums of money as the said constable may become liable to pay on account of any execution which shall be delivered to him for collection; and we do also jointly and severally agree and hereby become liable to pay each and every such person for any damages which he may sustain from or by any act or thing done by said constable by virtue of his office of constable.

Dated *March 1, 1886.*

A. B., [L. s.]  
C. D., [L. s.]  
E. F. [L. s.]

[Add acknowledgment and justification.]

2 Wend. 615; 12 id. 306.

The bond may run "to the people."

Id. 616; id. 281; 20 J. 74; 12 Wend. 307.

As to New York county, see 2 Abb. Pr. 188.

This bond is to be executed *in the presence of* the supervisor or town clerk, within eight days after notice of election or appointment, and filed in the town clerk's office, *after* the sureties therein have been approved, which approval may be as follows:

I hereby approve the foregoing bond as to its form and manner of execution and the sufficiency of the sureties therein, and hereby certify that the same was this day executed, in my presence, by said A. B., C. D. and E. F., therein named.

Dated *March 1, 1886.*

G. H.,  
SUPERVISOR,  
(or L. M.,  
TOWN CLERK.)

It would be safe practice to add the acknowledgment and justification as in section 24.

## § 52. Bond of Justice of the Peace.

Know all men by these presents, that I, Richard W. Reese, of Whitesboro, N. Y., who have been duly chosen to the office of justice of the peace of the town of Whitestown, in the county of Oneida, as principal, and Orville A. Burnham and Edward L. Akehurst, of the same place, as sureties of the said Reese, do hereby jointly and severally agree to pay over, upon demand, to the officer, person or persons who may be entitled thereto, all moneys received by said Reese by virtue of his said office.

Dated this *1st day of January, 1886.*

RICHARD W. REESE, [L. s.]  
ORVILLE A. BURNHAM, [L. s.]  
EDWARD L. AKEHURST. [L. s.]

[Add acknowledgment and justification and approval of the supervisor, or of the town clerk, if the said justice of the peace is also supervisor, as in the bond of highway commissioners, and section 24, *ante*.]

This bond should be filed "before entering upon the duties of his office," but the Revised Statutes provide that "whenever any officer is required by law to execute any official bond, he shall cause the same to be filed in the proper office within the time herein prescribed for filing his oath of office, unless otherwise provided by law."

The oath of office must be filed within fifteen days after he receives notice of his election or appointment, or within fifteen days after the commencement of his term of office.

Id., § 21.

It is filed with the town clerk.

### § 53. Bond of Excise Commissioners.

Know all men by these presents, that we, A. B., L. M. and R. S., as principals, and C. D. and E. F., as sureties, all of Camden, N. Y., are held and firmly bound unto G. H., as supervisor of the town of Camden, in the county of Oneida, in the penal sum of *(double the amount of excise moneys for the preceding year, stating the same in full, or if no moneys were then received, then for \$1,000)* for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this        day of        , 18        .

The condition of this obligation is such, that if the above bounden, A. B., L. M. and R. S., who have been elected commissioners of excise in and for said town, shall well and truly pay over to said G. H., as supervisor, or to his immediate successor in office, within thirty days after the receipt thereof, all moneys received by them as such commissioners of excise, in pursuance of, and as required by, chapter 444 of the Laws of 1874, and all laws amendatory thereof, or supplemental thereto, without fraud or delay, then this obligation shall be void; otherwise to remain in full force and virtue.

A. B.,	[L. s.]
L. M.,	[L. s.]
R. S.,	[L. s.]
C. D.,	[L. s.]
E. F.	[L. s.]

[Add acknowledgment, justification and approval by supervisor as in §§ 24 and 49, *ante*.]

It would seem that the supervisor shall retain the bond.

### § 54. Bond of Overseer of the Poor.

Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, all of the town of Marcy, Oneida county, N. Y., are held and firmly bound unto G. H., as supervisor of the town of Marcy, aforesaid, in the sum of        dollars, in pursuance of chapter 269, Laws of 1855, and the laws amendatory thereof, and supplemental thereto, for which payment well and truly to be made to the said G. H., as supervisor aforesaid, or to his successor in office, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 6th day of March, 1886.

WHEREAS, the above-named A. B. was, on the 1st day of March, 1886, duly elected to the office of overseer of the poor in and for said town of Marcy: Now, therefore, the condition of this bond is such that if the said A. B. shall faithfully discharge the duties of his said office, and shall well and truly keep, and pay out and account for all moneys which shall come into his hands, or possession, as such overseer, without fraud or delay, all of which we hereby covenant and agree that he shall do, then this obligation shall be void; otherwise to remain in full force and virtue.

A. B.,	[L. s.]
C. D.,	[L. s.]
E. F.	[L. s.]

[Add acknowledgment, justification and approval of the supervisor as in §§ 24 and 49, *ante*.]

This bond must be executed and delivered to the supervisor for his approval within ten days after being notified of the election or appointment, and within five days thereafter the same must be filed with the town clerk.

Bond of railroad commissioners can be adapted from the foregoing. It is conditioned "for the faithful discharge of their official duties as railroad commissioners of said town, and that they will well and truly keep and pay over and account for all moneys belonging to such town and coming into their hands as such commissioners."

Chap. 720, Laws of 1873; 1 R. S. 879.

The sureties are to be approved by the board of town auditors. The bond is made to and delivered to the town clerk within ten days after entering upon their duties and before receiving any of the town funds.

**§ 55. Filing Papers, Bonds, etc.**—The filing of papers, bonds and other documents means something more than mere delivery to the proper office or officer.

All such papers should be indorsed so as to show what they contain, together with the fact and date of their reception.

The following form is commonly used :

TOWN OF FLOYD.
<hr style="border: 0.5px solid black;"/>
RICHARD ROE
to
JOHN DOE, as Supervisor of the Town of Floyd.
<hr style="border: 0.5px solid black;"/>
Official Bond of RICHARD ROE, as Overseer of the Poor for the year 1886.
<hr style="border: 1px solid black;"/>
TOWN OF FLOYD, } CLERK'S OFFICE, } ss.:
The within bond was duly filed in said office this 6th day of March, 1886.
A. B., TOWN CLERK.



**§ 56. Reports by Supervisor.**—A supervisor is required to make or deliver the following reports or statements.

#### TO THE BOARD OF SUPERVISORS.

He shall lay before the board of supervisors such copies of entries concerning moneys voted to be raised in his town as shall be delivered to him by the town clerk.

1 R. S. 827.

It is the town clerk's duty to deliver the same to the supervisor, and the supervisor's duty to obtain the same and lay them before the board.

**§ 57. In Relation to Rejected Taxes.**—The comptroller shall transmit to the supervisor a return of rejected taxes, and the supervisor shall deliver the same to the board of supervisors at the next meeting. Whenever the comptroller shall have rejected any tax in the first instance, or have canceled and charged the same to a county to which it had previously been credited, the supervisor of the town or ward in which such lands are situate shall, if in his power, add to the assessment-roll of such town or ward, for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands and the correct amount of taxes thereon, stating the tax of each year and each kind of tax separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall have been required by him; and, if necessary, he may cause a survey of each lot or parcel returned for more perfect description to be made, and the expense of such survey and map shall be a charge upon such land to be added to the tax thereon.

2 R. S. 1021, §§ 18 and 19, as amended by chap. 152, Laws of 1873.

**§ 58. In Relation to Highway Commissioners' Statement.**—The commissioners of highways of each town shall deliver to the supervisor of such town a statement of the improvements necessary to be made on the roads and bridges, together with the probable expense thereof; which supervisor shall lay the same before the board of supervisors at their next meeting. The board of supervisors shall cause the amount so estimated to be assessed, levied and collected in such town in the same manner as other town charges, but the money to be raised in such town shall not exceed in any one year the sum of \$250.

Id. 1214, § 4.

See, also, the report in relation to roads and bridges, *post*, § .

**As to Noxious Weeds, etc.**—It shall be the duty of the overseer of every road district, and of the street commissioner of every city or village, to see that the provisions of section 1 of this act are enforced, and it is hereby made his duty to give written notice to any occupant of premises to cut all weeds, briars and brush growing within the bounds of the highway, if they shall neglect so to do, as above provided; and if, after receiving such notice, the occupant of the premises shall fail to do so within ten days, it shall be the duty of the overseer or street commissioner to employ some one to do so, and when he returns his warrant he shall make return, under oath, of the amount so expended by him, and the ownership and occupancy of the several parcels of land against which such labor was performed. The commissioner or commissioners of highways shall certify these statements to the supervisor of the town, and the supervisor shall lay the same before the board of supervisors at their next meeting, and such board shall include the amounts included in said statements in the taxes assessed upon the lands upon or against which the labor was performed, the same to be collected with the other taxes and paid over, upon the order of the supervisor, to the parties entitled thereto.

Chap. 291, Laws of 1886.

**As to Bridges over Boundary Streams or Waters.**—By chapter 346, Laws of 1883, counties are liable to pay one-sixth and not over one-fourth of the expense of construction, care, maintenance, preservation and repair of public bridges lawfully constructed over streams or other waters forming boundary lines thereof. The highway commissioner is required, on or before November first of each year, to deliver to the supervisor of his town a sworn statement, in writing, containing a description of said bridge, the whole expense, in items, incurred by said town during the year preceding for such construction, etc. This statement is to be laid before the board of supervisors.

See chap. 346, Laws of 1883, of statutes, *post*.

**Damages on Laying out Bridges.**—The award of the commissioners upon laying out any road, except private roads, is to be delivered by the supervisor to the board of supervisors.

See *post*, Roads and Bridges, subd. 5.

**§ 59. To Report as to Town Debt.**—Whenever a town has a public debt, consisting of bonds or other evidences of debt issued on the credit of said town, it is the duty of the supervisor

thereof to make a report to the board of supervisors of the county, at the next annual session thereof, and at every annual session thereafter, of the amount of the public debt of his said town.

Laws of 1870, chap. 552, § 1.

Such report must be in tabular form, specifying the different acts under which the bonds or debts were issued, with the rate of interest thereon, the amount unpaid at the time of the election of said supervisor, and the amount of debt paid at the date of said report, and coming due during his term of office.

Id., § 2.

Such report must be published in the annual report of the proceedings of the board of supervisors.

Id., § 3.

It is also the duty of the supervisor, at the expiration of his term of office, at the annual town meeting, to make and present thereto a duplicate copy of such report, including and adding thereto the amount of bonds issued, and the amounts and interest paid, since the date of said report, up to the day and date of his term of office, duly attested before a justice of the peace. Said report must be duly filed in the town clerk's office of the town, subject to the inspection, when required, of any elector thereof.

Id., § 4.

For neglecting or refusing to perform any of the above duties, he is to be deemed guilty of a misdemeanor, and shall forfeit, upon conviction, the sum of \$250, and be imprisoned not exceeding sixty days.

Id., § 6; 1 R. S. 852.

### Form of Report.

#### TO THE HONORABLE, THE BOARD OF SUPERVISORS OF ONEIDA COUNTY:

The undersigned, supervisor of the town of Boonville in said county, in compliance with chapter 552 of the Laws of 1870, respectfully reports,

That the bonded indebtedness of the town of Boonville, aforesaid, at the time of my election as supervisor, at the last town meeting, was.....	\$10,000 00
Amount paid at date of this report .....	Nothing.
Amount coming due, during my term of office, to-wit, on March 1, 1886.....	\$2,000 00

These bonds were issued bearing date March 1, 1885, in accordance with chapter 522, Laws of 1881, to provide for the payment of a like amount of bonds issued in aid of the Adirondack Railroad Company, and bear interest at the rate of four per cent, payable semi-annually, at the office of the Union Trust Company, of New York; bonds payable at the same place on maturity.

The bonds are divided into five series of two \$1,000 bonds each, and numbered A to E, inclusive. Series A is payable March 1, 1886, and one series annually thereafter till all are paid.

The amount to be provided for the coming year is as follows:

Interest March 1, 1886.....	\$200 00
Interest September 1, 1886....	160 00
Series A, March 1, 1886.....	2,000 00
Total.....	<u>\$2,860 00</u>

Dated November 10, 1885

Respectfully submitted,  
F. A. WILLARD,  
SUPERVISOR.

## To Report as to Bonded Indebtedness, etc.

By chapter 316 of the Laws of 1886, the supervisor is to make a report as to bonded indebtedness.

The law is as follows:

### CHAP. 316.

AN ACT in relation to the bonded indebtedness of villages, cities, towns and counties in this State, and to provide means for the payment and refunding thereof.

PASSED May 11, 1886; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. *Issue of bonds to retire present indebtedness.*—The present bonded indebtedness of any village, city, town or county in this State, including interest past due or unpaid, may be paid up or retired by the issue of new bonds for like amounts by the board of trustees, mayor or common council, town board, board of supervisors or supervisor, or railroad commissioners or officer or officers now having in charge according to law the payment of interest or principal on bonds herein proposed to be paid or retired respectively of such village, city, town or county; provided, however, that such new bonds shall be issued only when existing bonds can be retired by the substitution therefor of such new bonds or can be paid up by money realized on the sale of such new bonds, but where the said bonded indebtedness shall become due within two years from the issue of said new bonds, then such new bonds may be issued or sold to provide money in advance, with which to pay up such existing bonds, when they shall become due and payable; and provided further, that such new bonds shall bear interest at a rate not exceeding four per centum per annum, payable semi-annually or quarterly. All existing bonds taken up by the substitution of such new bonds, or paid under the provisions of this act, and all new bonds and coupons, when paid up as herein provided, shall be immediately canceled as now provided by law, and a certificate executed by the officers issuing such new bonds shall be forthwith made and filed by them in the county clerk's office of the proper county, which shall state the amount of existing bonds so canceled and of new bonds so issued. This act shall not be so construed as to authorize the issue of new bonds to supersede or pay existing bonds which have been adjudged invalid by the final judgment of a competent court. The new bonds so to be issued shall be made payable at any period or periods deemed advisable by the officers issuing the same, not less than one year nor more than forty years from their date; and shall bear date and draw interest from the date of the payment of existing bonds, or the receipt of the money to pay existing bonds; and an amount not less than two per cent of the whole amount of said bonds so issued shall be made payable and shall be paid and retired, each and every year after the issue thereof, and said bonds shall be issued in no case at less than for their par value.

§ 2. *Bonds—Recitals in.*—The bonds issued under the provisions of this act when submitted\* or sold to retire existing bonds, by any authorized officers of any town, village, city or county, or their successors in office, shall be valid and binding on the town, village, city or county wherein they are issued, and such bond shall contain a recital that they are issued under the provisions of this act, and such recital shall be conclusive evidence in any court of the validity of said bonds and the regularity of their issue.

§ 3. *Exempt from taxation.*—All new bonds issued by any village, city, town or county in this State, under the provisions of this act, shall be exempt from taxation for town, county, municipal or State purposes, until the period when they are made payable.

§ 4. *Railroad commissioners, supervisors, etc., to report annually.*—It shall be the duty of the railroad commissioners, supervisors and financial officers of towns, villages, cities and counties, having in charge the money received and collected, and responsible for the payment of the interest and principal due on bonds issued under this act, and they are hereby required to report annually to the board of supervisors of counties, the trustees of villages and the mayor and board of aldermen or common council of cities as the case may be, as now required by law, the sum due and payable the succeeding year, both principal and interest on said bonds.

§ 5. *Levy of tax to pay interest.*—It shall be the duty of the board of supervisors of counties, the trustees of villages, and the board of aldermen and the common council of cities, and they are hereby required to levy and collect in each year upon the towns, villages, cities or counties severally obligated, moneys sufficient to pay such interest when and as it shall fall due, and the principal of such bonds, when and as the same shall become due and payable.

§ 6. *Commissioners to give bonds.*—Before the said commissioners or either of them shall enter upon the discharge of their duties under this act, they shall jointly and severally, with two or more sureties, execute to the supervisor of said town or city a bond in the penal sum equal to one-fourth the amount to be issued by said town or city under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act and existing laws, and for the just and honest application by them of all moneys, or bonds issued by them or coming into their hands as such commissioners. The sufficiency of said sureties shall be determined by the supervisor of said town or city, or the county judge of the county wherein said town is situated, or any justice of the supreme court, and shall be indorsed on said bonds. The said bond shall immediately thereafter be deposited with the supervisor or supervisors of said town or city, to be collected by him or his successors in office for the use and benefit of said town or city, in case the said commissioners, or either of them, are guilty of such a breach of duty or malfeasance in office as to render said bonds collectible; and it is further provided, that any willful misappropriation or embezzlement, or wrongful conversion of any said town bonds, or the moneys arising from the same, or the moneys to be raised by a sale thereof, as provided by this act, or of moneys to be raised by a tax as aforesaid, to an amount exceeding \$1,000, shall be a felony punishable by imprisonment in the State prison for a term not exceeding ten years.

§ 7. This act shall take effect immediately.

The form of this report can be made from the preceding one.

**§ 60. List of Collectors and Assessors.—Duty of Town and City Clerks.**—The clerks of the cities of New York, Albany, Hudson, Schenectady and Troy, and the town clerks of the several towns, shall yearly, before the first day of October in each year, certify and deliver to the supervisors of their respective towns the names of all the assessors and collectors in

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\* So in original.

their respective cities and towns, and the same shall be delivered to the board of supervisors at their next meeting.

2 R. S. 1048.

**§ 61. As to Sheep Injured by Dogs.**—When the owner of sheep injured by dogs shall produce to the supervisor the certificate of the fence viewers, showing the amount of the damage, and his own affidavit that he has failed to discover the owner or possessor of the dogs, or that he has failed to recover his damages, the supervisor shall lay the same before the board of supervisors at the next meeting.

3 R. S. 2118, § 12.

The board of supervisors issue an order therein to the county treasurer therefor.

Id., § 13.

This law does not apply to those counties which have adopted the act known as the "Ontario County Law."

See 3 R. S. 2120, or chap. 197, Laws of 1864.

**§ 62. List of Grand Jurors.**—As the list of grand jurors must be made out and filed by the board of supervisors within ten days after the first day of the annual meeting, the supervisor of each town should present to the board of supervisors, immediately after the board convenes, a list of such persons in his town as he deems qualified to serve as grand jurors. Such persons must be,

- 1st. Qualified to serve as jurors for the trial of issues of fact.
- 2d. Of approved integrity, fair character, sound judgment and well informed.
- 3d. And not exempt from serving as trial jurors.

This list should contain the Christian and surnames in full, their places of residence and occupation.

3 R. S. 2558.

The whole number for each county, except New York, is three hundred, and is apportioned among the towns according to the population of each. This number may be increased by the order of certain judges.

Id. 2559.

For New York and Albany counties this is not applicable

Form of —

TO THE HONORABLE, THE BOARD OF SUPERVISORS OF RENSSELAER COUNTY:

The following is a list of grand jurors selected by the supervisor of the town of Hoosick from the qualified inhabitants thereof:

NAMES.	Occupation.	Residence.
John Jones ..... (Add other names in full)	Blacksmith . . .	Hoosick Corners.

I hereby certify that the foregoing is a list of grand jurors selected by me from the qualified inhabitants of the town of Hoosick.

Dated November 10, 1885.

G. W. M.,  
SUPERVISOR.

**§ 63. To Report to Superintendent of Public Instruction.**—It is the duty of the supervisor, when so required by the superintendent of public instruction, to report to him any facts or information he may require.

Laws of 1864, chap. 555, tit. 3, § 21; 2 R. S. 1151.

**§ 64. To Report Paupers to the Clerk of Board of Supervisors.**—It shall be the duty of the supervisor of every town, in those counties where all the poor are not a county charge, to report to the clerk of the board of supervisors, within fifteen days after the accounts of the overseers of the poor have been settled by the board of town auditors, in each year, an abstract of all such accounts for the preceding year, which shall exhibit the number of paupers that have been relieved or supported in such town the preceding year, specifying the number of county paupers and of town paupers, the whole expense of such support, and specifying the allowance made to overseers, justices, constables or other officers, and any other items which shall not comprise any part of the actual expense of maintaining the paupers.

The said abstracts shall be delivered by the clerk of the board of supervisors to the county superintendents, to be included by them in their report aforesaid.

Any supervisor who shall neglect or refuse to make such reports, abstracts or copies aforesaid, or who shall willfully make any false report, shall forfeit \$100.

3 R. S. 1868, § 76.

This report is only to be made by the supervisors of those counties where all the poor are not a county charge.

The board of town auditors meet for this purpose on the *Tuesday* preceding the annual town meeting, so that this report *must* be made *within fifteen days* thereafter. The supervisor in office at

the time the accounts are audited should make the report, but if he does not, his successor must do so, or he will be liable for the neglect.

### Form of report :

#### TO THE CLERK OF THE BOARD OF SUPERVISORS:

The undersigned, supervisor of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, respectfully reports as follows:

The number of paupers supported or relieved in the town of \_\_\_\_\_, during the year ending the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, as appears from the accounts of the overseers of the poor, was.....

Of these, the number of county paupers was .....  
 " " town " " .....

The whole expense of such support was ..... \$

Of this sum there was paid for transportation of paupers.....

Allowance made to overseers for their services.....

" " justices ... ..

" " keepers and officers.....

" " physicians for services and medicines .....

" " overseers for support of county paupers .....

" " for town paupers ... ..

The actual value of the labor of the paupers maintained was .....

Estimated amount saved in the expense of their support, in consequence of their labor, was .....

[Insert any other charges there may be.]

Of the whole number of paupers relieved by the overseers, there were foreigners, lunatics, idiot and mutes. The number of paupers under their charge, at the time of auditing their accounts, was \_\_\_\_\_; of which \_\_\_\_\_ were males and \_\_\_\_\_ females. The vested poor money of said town amounts to \_\_\_\_\_ dollars. The sum raised by tax upon the town, for the support of the poor for the year preceding this report, was \_\_\_\_\_ dollars.

I certify that the foregoing is a correct abstract of the accounts of the overseers of the poor of the town of \_\_\_\_\_, for the year ending the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, as they were settled by the town auditors.

Dated \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

C. D.,  
SUPERVISOR.

Report, as to commitments or appointments to State Benevolent Institutions, within ten days. See *post*, Benevolent Institutions.

**§ 65. To Make a Return of Moneys in their Hands to the County Treasurer.**—On the first Tuesday in March in each year, each supervisor shall make a return in writing to the county treasurer for the use of the school commissioners, showing the amounts of school moneys in his hands not paid out on the orders of trustees for teachers' wages, nor drawn by them for library purposes, and the districts to which they stand accredited (and if no such moneys remain in his hands, he shall report that fact); and thereafter he shall not pay out any of said moneys until he shall have received the certificate of the next apportionment; and the moneys so returned by him shall be reapportioned as hereinbefore directed.



**Penalty for Neglect.**—Any supervisor who neglects to make the said return, or shall make a false return, shall forfeit \$25, to be recovered by his successor in office, or if he be re-elected, by the county treasurer of the county in which the town lies, for the benefit of the common schools of the county.

Id., § 5.

Form of report:

TO THE COUNTY TREASURER OF THE COUNTY OF RENSSELAER:

The undersigned, supervisor of the town of Schodack, in said county, hereby returns and reports that the amount of school money in his hands not paid out on the orders of trustees, for teachers' wages, nor drawn by them for library purposes, is..... \$700 00

That said moneys stand accredited to the districts as follows:

District No. 1.....	50 00
District No. 2.....	75 00

\$

Dated.

(Signature.)

**§ 66. To the State Engineer and Surveyor—State Boundary Monuments.**—The supervisors and commissioners of highways of any and all towns of this State which may adjoin any of the boundary lines of the State are hereby charged with the care and preservation of the monuments which have heretofore been placed, or may hereafter be placed, by official action, to mark the said boundary lines. And the said supervisors and commissioners of highways are hereby required to enforce the statutes of this State for the preservation of monuments and landmarks, so far as they may relate to said boundary monuments, and to prosecute any person who may injure, disturb or remove any of them.

Said supervisors and commissioners of highways are hereby required annually in the spring to make an examination and inspection of the condition of all said boundary monuments upon the State boundary adjoining their respective towns, and to make a detailed report thereof to the State engineer; their fees for such services shall be a town charge, to be audited upon the presentation of the certificate of said State engineer and surveyor that such report has been filed as a voucher.

Chap. 449, Laws of 1886.

**§ 67. Account of School Moneys.—To the Town Clerk.**—Within fifteen days after the determination of

his office, to make out a just and true account of all school moneys theretofore received by him and of all disbursements thereof, and to deliver the same to the town clerk, to be filed and recorded, and to notify his successor in office of such rendition and filing.

2 R. S. 1155, § 6, subd. 6, or chap. 555, Laws of 1864.

**§ 68. Supervisor of Town to make List of Corporations to the Comptroller.**—The supervisors of each town, ward, city or district in this State for which a supervisor is elected shall, on or before the first day of May in each year, make an accurate list of every corporation, joint-stock company and association incorporated by this or any other State or country, located or doing business in such town, ward, city or district for which such supervisor has been elected, and shall forthwith forward the same to the comptroller of this State, verified by their oath before some magistrate or person authorized to administer oaths, to the effect that such list is full and complete to the best of their knowledge, information and belief.

The comptroller of this State shall, on or before the fifteenth day of April in each year, forward to the said supervisors suitable forms for making up the said lists so required to be sent to him.

Chap. 166, Laws of 1881 ; 1 R. S. 865.

**§ 69. All Suits Against the Town.—To the Town Meeting.**—In all legal proceedings against towns by name, the first process and all other proceedings required to be served shall be served on the supervisor of the town; and whenever any such suit or proceeding shall be commenced, it shall be the duty of the supervisor to attend to the defense thereof, and to lay before the electors of the town, at their first town meeting, a full statement of such suit or proceeding for their direction in regard to the defense thereof.

1 R. S. 840, § 3.

**§ 70. As to Town Debt.**—The report mentioned at section 59 is also to be made to the town meeting,

See *ante*, § 59.

and add to it, the amount of bonds issued, and the amounts and interest paid since said report, up to the day and date of his term of office, duly attested before a justice of the peace.

The forms for the more important reports, etc., are set forth *ante*. From these, the others can readily be made out.

## AS TO COMMON SCHOOLS, SCHOOL DISTRICTS.

§ 71. In 1864, by chapter 555, the several statutes in relation to common schools were consolidated, and, so far as they pertain to the duties of the supervisor, are as follows :

## GOSPEL AND SCHOOL LOTS.

## § 72. Supervisor's Duties in Relation to.—

The supervisor, by virtue of his office, is trustee for the gospel and school lot funds, lands, etc., and vested with the following powers and duties :

1. To take and hold possession of the gospel and school lots of their town.

2. To lease the same for such time, not exceeding twenty-one years, and upon such conditions as they shall deem expedient.

3. To sell the same, with the advice and consent of the inhabitants of the town, in town meeting assembled, for such price and upon such terms of credit as shall appear to them most advantageous.

4. To invest the proceeds of such sales in loans, secured by bond and mortgage upon unincumbered real property of the value of double the amount loaned.

5. To purchase the property so mortgaged upon a foreclosure, and to hold and convey the property so purchased whenever it shall become necessary.

6. To re-loan the amount of such loans repaid to them, upon the like security.

7. To apply the rents and profits of such lots, and the interest of the money arising from the sale thereof, to the support of the gospel and schools, or either, as may be provided by law, in such manner as shall be thus provided.

8. To render a just and true account of the proceeds of the sales and the interest on the loans thereof, and of the rents and profits of such gospel and school lots, and of the expenditure and appropriation thereof, on the last Tuesday next preceding the annual town meeting in each year, to the board of auditors of the accounts of other town officers.

9. To deliver over to their successors in office all books, papers and securities relating to the same, at the expiration of their respective offices ; and,

10. To take therefor a receipt which shall be filed in the clerk's office of the town.

**§ 73. When Town Divided.**—Whenever a town, having lands assigned to it for the support of the gospel or of schools, shall be divided into two or more towns, or shall be altered in its limits by the annexing of a part of its territory to another town or towns, such lands shall be sold by the trustees of the town in which such lands were included immediately before such division or alteration, and the proceeds thereof shall be apportioned between the towns interested therein, in the same manner as the other public moneys of towns, so divided or altered, are apportioned.

The shares of such moneys, to which the towns shall be respectively entitled, shall be paid to the trustees of the gospel and school lots of the respective towns, and shall thereafter be subject to the provisions of this title.

Whenever the "trustees of the gospel and school lots" are spoken of above it now means the supervisor of the town.

2 R. S. 1154; Taylor v. Gurnee, 26 Hun, 624.

**§ 74. Moneys in the Hands of the Overseers of the Poor.**—In 1829, by chapter 287 of the Laws of 1829, the right was given to towns, in counties that had abolished, or should thereafter abolish, the distinction between county and town paupers, to appropriate the moneys and funds remaining in the hands of the overseers of the poor of such town to such objects and for such purposes as shall be determined at a town meeting. If the town meeting determined to appropriate the moneys and funds for the benefit of common schools in the town, such moneys were denominated "the common-school fund of such town," and were placed under the care and superintendence of the commissioners of common schools of said town. Afterward, the office of commissioners of common schools in towns was abolished, and their powers vested in the supervisor.

The act of 1829 is given herewith, and wherever the commissioners of common schools are mentioned therein the supervisor now acts in their place and is vested with their powers.

The following is the act of 1829 (chap. 287) above referred to:

§ 1. It shall be lawful for the inhabitants of any town, in such counties as have abolished the distinction between county and town paupers, and in such counties as may hereafter abolish such distinctions, at any annual or special town meeting, to appropriate all or any part of the moneys and funds remaining in the hands of the overseers of the poor of such town, after such abolition, to such objects and for such purposes as shall be determined on at such meeting.

§ 2. If any such meeting shall appropriate such money or funds for the benefit of common schools in their town, the money so appropriated shall be denominated "the common-school fund of such town," and shall be under the care and superintendence of the commissioners of common schools of said town.

§ 3. If any such meeting shall appropriate such money or funds for the benefit of common schools, after such appropriation shall have been made, and after the commissioners of common schools shall have taken the oath of office, the overseers of the poor of such town shall then pay over and deliver to the said commissioners such moneys, bonds, mortgages, notes and other securities remaining in their hands as such overseers of the poor as will comport with the appropriation made for the benefit of common schools of their town.

§ 4. The said commissioners of common schools may sue for and collect in their name of office the money due or to become due on such bonds, mortgages, notes or other securities, and also all other securities by them taken under the provisions of this act.

§ 5. The moneys, bonds, mortgages, notes and other securities aforesaid shall continue and be a permanent fund, to be denominated the common-school fund of the town appropriating the same, the annual interest of which shall be applied to the support of common schools in such towns, unless the inhabitants of such town, in annual town meeting, shall make a different disposition of the whole of the principal and interest, or any part thereof, for the benefit of the common schools of such town.

§ 6. The said commissioners of common schools, whenever the whole or any part of the principal of said fund shall come to their hands, shall loan the same on bond, secured by mortgage on real estate of double the value of the moneys so loaned, exclusive of buildings or artificial erections thereon.

§ 7. The said commissioners of common schools may purchase in the estate on which the fund shall have been secured, upon the foreclosure of any mortgage, and may hold and convey the same for the use of said fund.

§ 8. The said commissioners of common schools shall retain the interest of said common school fund, which shall be distributed and applied to the support of common schools of such town, in like manner as the public money for the support of common schools shall be distributed by law.

§ 9. The said commissioners of common schools shall account annually, in such manner and at such time as town officers are required by law to account, and shall deliver to their successors in office all moneys, books, securities and papers whatsoever relating to said fund, and shall take a receipt therefor and file the same with the town clerk.

2 R. S. 1154, note 1.

## **§ 75. Disbursing of, and Accounts for School Moneys, see §§ 38 and 39, *ante*.**

**§ 76. Alteration of School District.**—The school commissioner has power, with the consent of the trustees of all districts affected thereby, to make an order altering the same, but if the trustees of any such district refuse to consent to the alteration of a district, the commissioner may make and file, with the town clerk, his order making the alteration, but reciting the refusal, and directing that the order shall not take effect, as to the dissenting district or districts, until a day therein to be named and not less than three months after the notice in the next section mentioned.

§ 3, chap. 555, Laws of 1864, as amended by chap. 406, Laws of 1867; 2 R. S. 1157.

Within ten days after making and filing such order he shall give at least a week's notice in writing to one or more of the assenting and dissenting trustees of any district or districts to be affected by the proposed alterations, that at a specified time and at a named place within the town, in which either of the districts to be

affected lies, he will hear the objections to the alteration. The trustees of any district to be affected by such order may request the supervisor and town clerk of the town or towns within which such district or districts shall wholly or partly lie, to be associated with the commissioner. At the time and place mentioned in the notice the commissioner or commissioners, with the supervisors and town clerks, if they shall attend and act, shall hear and decide the matter; and the decision shall be final unless duly appealed from. Such decision must either confirm or vacate the order of the commissioner, and must be filed with and recorded by the town clerk of the town or towns in which the district or districts affected shall lie.

Id., as amended by chap. 647, Laws of 1865; *People v. Hooper*, 13 Hun, 639.

## § 77. Form of Order Altering or Forming a District.

In the Matter of the Formation of District No. , in the Town of , County of , and the consequent Alteration of District No. , in said Town, and District No. , in the Town of .

It is hereby ordered, by the undersigned school commissioner for commissioner district No. 1 of the county of , that a new school district be formed, to consist of part of district No. , in the town of , and part of district No. , in the town of , which new district is hereby numbered twelve and is bounded as follows: Beginning on the east bank of Allen's creek, at the point where the same is intersected by the north line of the highway leading from B. to P.; thence north-easterly along said creek to its junction with I. creek; thence south-easterly along I. creek to the west line of the town of B.; thence south along the boundary line between the towns of B. and P. to the north line of P.; thence west on said north line to the State road; thence north along the State road to its intersection with the highway first above mentioned; thence north-westerly along said highway to the place of beginning.\* This order is made with the consent of all of the trustees of each of said districts affected thereby, which consent is hereby annexed and to be recorded herewith, and shall take effect on ( ).

Dated June 1, 1886,.

W. D. BIDDLECOME,  
SCHOOL COMMISSIONER.

If a majority of the trustees of any district affected thereby refuse their consent, the order should recite that fact and that it will not take effect until after three months' notice in writing to some one or more of such trustees, changing the order above from the asterisk(\*) as follows:

This order is made with the consent of all the trustees of said district No. .  
The trustees of district No. not having consented to this order, the

same will not take effect in respect to said last-mentioned district, until September ( ), after three months' notice, in writing, shall be given to one or more of the assenting or dissenting trustees of said districts to be affected by said proposed alteration.

Dated , 18 .

(Signature as before.)

## § 78. Form of Consent by Trustees.

At a Meeting of the Trustees of District No. , in the Town of , County of , called for the purpose of considering certain proposed Alterations thereof, held on the day of , at which were present J. D. and R. S., and in the absence of P. T., a Trustee, who having been duly notified of such meeting, failed to attend, it was

*Resolved*, that the consent of the trustees of district No. , in the town of be and hereby is given, to the alteration of said district by an order bearing date June 1, 1886, made by W. D. Biddlecome, school commissioner of the first commissioner's district of Oneida county (or that said district be so altered as to be hereafter bounded as follows: *describing the new boundaries fully*).

In witness, the undersigned, a majority of said trustees, have hereunto subscribed their hands this day of .

J. D.,  
R. S.,  
TRUSTEES.

The school commissioner cannot call upon the supervisor and town clerk to act with him, for the jurisdiction of the latter depends upon an application to them by the trustees of some district to be affected thereby. In order to give them the opportunity to make such application and that it may be done, or the option waived within a reasonable time, the school commissioner should serve a written notice upon one or more of the trustees as follows:

## § 79. Form.

TO THE TRUSTEES OF DISTRICT NO. , IN THE TOWN OF :

Take notice that I intend on the day of , at , to make an order for the alteration of district No. , in the town of , so that its boundaries shall thereafter be as follows: (*specify fully the proposed boundaries of the district as altered as in the preceding order.*)

You are, therefore, requested to meet without delay, and to adopt a resolution consenting to the above alteration, in which case you will please furnish me, at said time and place, with a copy thereof, certified under the hands of a majority of you, or to adopt a resolution applying to the supervisor and town clerk of the town (*or towns if the district is a joint one*) of , to be associated with me at the time and place above mentioned in determining upon the propriety of such proposed alteration. In the latter case, you will please transmit copies of such resolution, certified under the hands of a majority of you, to the supervisor and town clerk without delay, together with notice of the time and place above stated at which such alteration will be made by me, in case of their non-attendance.

C. D.,  
SCHOOL COMMISSIONER.

The above forms, with a few changes, are taken from the Code of Public Instruction, p. 186 *et seq.*

## § 80. Form of Decision thereupon.

<p>In the Matter of the Formation of  District No.       , in the Town of       ,  County of       , and the conse-  quent Alteration of District No.       ,  in said Town, and District No.       ,  in the Town of       .</p>
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We, the undersigned, commissioner of common schools for the        district of Rensselaer county, supervisor and town clerk of the town of Pittstown in said county, having met at the house of       , in said town, on the        day of       , for the purpose of hearing and deciding the matter of the order made by such commissioner of common schools, on the        day of       , altering school district No. 5, in said town, which order is as follows (*insert order*):

And having heard all the objections presented to said order, do hereby decide that said order be confirmed (or vacated).

Given under our hands the        day of       

(Signatures.)

Each of the orders above mentioned must be filed with and recorded by the town clerk of the town, or towns, in which said district or districts to be affected shall lie.

**§ 81. On the Dissolution of a District.**—When a district is parted into portions, which are annexed to other districts, its property shall be sold by the supervisor of the town within which its school-house is situate, at public auction, after at least five days' notice, by notices posted in three or more public places of the town in which the school-house is, one of which shall be posted in the district so dissolved. The supervisor, after deducting the expenses of the sale, shall apply its proceeds to the payment of the debts of the district, and apportion the residue, if any, among the owners or possessors of taxable property in the district, in the ratio of their several assessments on the last corrected assessment-roll or rolls of the town or towns, and pay it over accordingly.

The supervisor of the town within which the school-house of the dissolved district was situate, may demand, sue for, and collect, in his name of office, any money of the district outstanding in the hands of any of its former officers, or any other person; and, after deducting his costs and expenses, shall report the balance to the school commissioner, who shall apportion the same equitably among the districts to which the parts of the dissolved district were annexed, to be by them applied as their district meetings shall determine.

Though a district be dissolved, it shall continue to exist in law, for the purpose of providing for and paying all its just debts; and to that end, the trustees and other officers shall continue in office, and the



inhabitants may hold special meetings, elect officers to supply vacancies, and vote taxes; and all other acts necessary to raise money and pay such debts shall be done by the inhabitants and officers of the district.

2 R. S. 1158, §§ 9, 10 and 11, or chap. 555, Laws of 1864.

**§ 82. Equalizing Taxes on Lands in several Towns.**—When a district embraces parts of more than one town, it shall be the duty of the supervisors of such towns so in part embraced, upon receiving a written notice from the trustee or trustees of such district, or from three or more persons liable to pay taxes upon real estate therein, to meet at a time and place to be named in such notice, which time shall not be less than five nor more than ten days from the service thereof, and a place within the bounds of the towns so in part embraced, and proceed to inquire and determine whether the valuation of real property upon the several assessment-rolls of said towns are substantially just as compared with each other, so far as said districts are concerned, and if ascertained not so to be, they shall determine the relative proportions of taxes that ought to be assessed upon the real property of the parts of such district lying in different towns, and the trustees of such district shall thereupon assess the proportion of any tax thereafter to be raised, according to the determination of such supervisors, until new assessment-rolls of the towns shall be perfected and filed, using the assessment-rolls of the several towns to distribute the said proportion among the persons liable to be assessed for the same. In cases where such supervisors shall be unable to agree, they shall summon a supervisor from some adjoining town, who shall unite in such inquiring, and the finding of a majority shall be the determination of such meeting.

Id. 1171, § 69, or chap. 555, Laws of 1869, as amended by chap. 567, Laws of 1875, tit. 7, art. 7, § 69.

The supervisors of Cazenovia and Sullivan were applied to under this statute, to inquire and determine whether the valuations of real property upon the several assessment-rolls of those towns were substantially just as compared with each other so far as district No. 3, lying partly in each town, was concerned. The two supervisors being unable to agree, a third was called in and they determined that the amount of \$10,650.31 should be added to the assessment of the town of Cazenovia for said district.

The superintendent set aside their proceedings and held that they were irregular. Their action was not such as is contemplated by law. Their duty was to determine the relative proportion of taxes that ought to be assessed upon the real property of the parts lying in the different towns. Instead of this, the supervisors undertook to equalize the valuation of real property in the different towns so far as said district is concerned, and for this no warrant of law can be found.

Code of Public Instruction, 475.

**§ 83. Site of School-house, how Changed.—**

So long as a district shall remain unaltered, the site of a school-house owned by it, upon which there is a school-house erected or in process of erection, shall not be changed, nor such school-house be removed, unless by the consent, in writing, of the supervisor or supervisors of the town or towns within which such district shall be situated, stating that in his or their opinion such removal is necessary; nor with such consent, unless a majority of all the legal voters of said district present and voting, to be ascertained by taking and recording the ayes and noes, at a special meeting called for that purpose, shall be in favor of such new site.

2 R. S. 1163, § 20, or chap. 555, Laws of 1864, tit. 7, art. 2, § 20, as amended by chap. 647, Laws of 1865.

This consent of a supervisor must be as prescribed by statute. When he certifies that he thinks the removal "necessary if the inhabitants so determine" such consent amounts to no consent at all. His opinion must be founded on the *condition of things existing in the district*, not upon what may be voted on the question.

Code of Public Instruction, 467.

When his consent is obtained by misrepresentations, the proceeding will be set aside.

Id. 468.

The law requires a supervisor to state in his written consent, that a removal is necessary.

Id. 469.

**§ 84. To Condemn unfit School-houses.—**The commissioner of schools has power in concurrence with the supervisor of the town in which a school-house is situated, by an order under their hands, reciting the reason or reasons, to condemn such school-house, if they deem it wholly unfit for use and not worth repairing, and to deliver the order to the trustees, or one of them, and transmit a copy to the superintendent of public instruction. Such order, if no time for its taking effect be stated in it, shall take effect immediately.

They shall also state what sum, not exceeding \$800, will, in their opinion, be necessary to erect a school-house capable of accommodating the children of the district. Immediately upon the receipt of said order, the trustee or trustees of such district shall call a special meeting of the inhabitants of said district, for the purpose of considering the question of building a school-house therein. Such meeting shall have power to determine the size of said school-house, the material to be used in its erection, and to vote a tax to build the same; but such meeting shall have no power to reduce the estimate

made by the commissioner and supervisor by more than twenty-five per cent of such estimate — and where no tax for building such school-house shall have been voted by such district within thirty days from the time of holding the first meeting to consider the question, then it shall be the duty of the trustee or trustees of such district to contract for the building of a school-house capable of accommodating the children of the district and to levy a tax to pay the same, which tax shall not exceed the sum estimated as necessary by the commissioner and supervisor as aforesaid, and which shall not be less than such estimated sum by more than twenty-five per cent thereof. But such estimated sum may be increased by a vote of the inhabitants at any school meeting subsequently called and held according to law.

2 R. S. 1146, subd. 4, § 13, or chap. 555, Laws of 1864, title 2, § 13, subd. 4, as amended by chap. 406, Laws of 1867.

**§ 85. When Supervisor to Fill Vacancy in Office of Trustee.**— In case the office of a trustee shall be vacated by his death, refusal to serve, incapacity, removal from the district or neighborhood, or by his being removed from the office, or in any other manner, and the vacancy be not supplied by a district or neighborhood meeting within one month thereafter, the supervisor of the town within which the school-house, or principal school-house, of the district is, or within which the neighborhood or any part thereof is, may, by a writing under his hand, appoint a competent person to fill it.

See "FORM" below.

A trustee who publicly declares that he will not accept or serve in the office of trustee, or who refuses or neglects to attend three successive meetings of the board, of which he is duly notified, without rendering a good and valid excuse therefor to the other trustees, or trustee, where there are but two, vacates his office by refusal to serve.

Every appointment to fill a vacancy shall be forthwith filed by the supervisor or trustees making it, in the office of the district clerk, who shall immediately give notice of the appointment to the person appointed.

2 R. S. 1164, or chap. 555, Laws of 1864, title 7, art. 3, §§ 30, 31, 33.

If any person elected or appointed, being duly qualified to serve, shall refuse to serve, he shall forfeit \$5, and if he do not refuse to accept the office, but shall willfully neglect or refuse to perform any duty thereof, he shall, by such refusal or neglect, vacate his office

and forfeit \$10. These penalties are for the benefit of the common schools of the town.

Id., § 34.

### § 86. Form of Order Appointing Trustee.

WHEREAS, a vacancy has occurred in the office of trustee of common schools in school district No. 4, in the town of Pittstown and county of Rensselaer, by reason of (*insert reason*), of G. H., heretofore elected to said office, and such vacancy not having been supplied by a district or neighborhood meeting within one month thereafter,—

Now, therefore, I do hereby appoint C. H. trustee of said district, according to the statute in such case made and provided.

Dated.

C. D.,

SUPERVISOR OF THE TOWN OF PITSTOWN.

This appointment holds until the next annual meeting.

**§ 87. Supervisor may Accept Resignation of Trustee.**—But the supervisor of the town wherein any such person resides may accept his written resignation of the office, and the filing of such resignation and acceptance in the office of the district clerk shall be a bar to the recovery of either penalty in the last preceding section mentioned, or such resignation may be made to and accepted by a district meeting.

Id., § 85.

**§ 88. Supervisor may Consent to Renewal of Warrant for School Tax.**—Whenever more than one renewal of a warrant for the collection of any tax list or rate bill may become necessary in any district, the trustees may make such further renewal, with the written approbation of the supervisor of any town in which a school-house of said district shall be located, to be indorsed upon such warrant.

2 R. S. 1175, § 87, tit. 7, chap. 555, Laws of 1864.

The first renewal may be made by trustees, without consent of supervisor. The second and subsequent renewals require his consent.

### § 89. Form of Renewal.

With the approbation of the supervisor of the town of \_\_\_\_\_, we hereby renew the within (*or foregoing*) warrant in respect to delinquents for the period of thirty days.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1886.

A. B.,

C. D.,

E. F.,

TRUSTEES OF DISTRICT NO. \_\_\_\_\_ IN THE TOWN OF \_\_\_\_\_.

The supervisor is to approve of the same, in writing, under the above.

Approved this            day of            , 1886.

G. H.,

SUPERVISOR OF THE TOWN OF            .

Or as follows:

I hereby approve and consent to a further renewal of the within (*or foregoing*) warrant for the period of thirty days.

Dated    , 1886.

G. H.,

SUPERVISOR OF THE TOWN OF            .

**§ 90. To Sue Trustees for Penalties.**—Every trustee who shall refuse or neglect to render once in each year to the district, at its annual district meeting, a just, full and true account of moneys received and expended, or an outgoing trustee who shall neglect or refuse to pay over to his successor, or any other trustee in office, any unexpended balance remaining in his hands, shall forfeit \$25, to be sued for and collected by the supervisor of the town in which the school-house is, for the benefit of the schools of the district.

Laws of 1864, chap. 555, tit. 7, §§ 55, 56, 57; 2 R. S. 1169.

**§ 91. Duty of Town Clerk.**—It is the duty of the town clerk, under the school law, to report to the supervisor any loss of or injury to any books, maps, papers and records of his office touching common schools; to receive from the supervisor the certificates of apportionment of school moneys to the town, and record them in a book to be kept for the purpose; forthwith to notify the district trustees of the filing of such certificates; to receive from the supervisor and record the annual account of the receipts and disbursements of school moneys required to be submitted to the town auditors, together with the action of the town auditors thereon, and to send a copy thereof by mail to the superintendent of public instruction, whenever so required by him, and to file and preserve the vouchers accompanying the accounts. To receive and record in the same book the supervisor's final account of the school moneys received and disbursed by him, and deliver a copy thereof to the successor in office of such supervisor. To receive from the outgoing supervisor, and file and record in the same book, the county treasurer's certificate that his successor's bond has been given and approved.

Laws of 1864, chap. 555, tit. 5; 2 R. S. 1156.

There are other duties of the town clerk in connection with common schools, but the above are the ones pertaining to his duties so far as the supervisor is concerned.

**§ 92. Supervisor to sue for Penalties and Forfeitures imposed by laws relating to Schools.**—It is the duty of the supervisor, by his name of office, when the duty is not elsewhere imposed by law, to sue for and recover penalties and forfeitures imposed for violations of this act, and for any default or omission of any town officer or school district board or officer under this act, and after deducting his costs and expenses, to report the balances to the school commissioner.

Laws of 1864, chap. 555, tit. 4, § 6, subd. 9; 2 R. S. 1155, § 6, subd. 9.

**§ 93. Certificate of Apportionment of School Moneys by School Commissioner.**—The school commissioner shall certify to the supervisor of each town, the amount of school moneys apportioned to his town, and the portions thereof to be paid by him for library purposes and for teachers' wages, to each such distinct separate neighborhood, district and part of a district.

Id., tit. 3, § 27, subd. 10; 2 R. S. 1153.

**§ 94. Duty of Supervisor.**—On receiving the certificate of the commissioners, each supervisor shall forthwith make a copy thereof for his own use, and deposit the original in the office of the clerk of his town; and the moneys so apportioned to his town shall be paid to him immediately on his compliance with the requirements of the next section, and not before.

Id., § 80.

"The requirements of the next section" are the giving of the bond, etc. The law may be found at section 23, "second," *ante*.

**§ 95. Embezzlement of Moneys by Supervisors.**—A supervisor who shall embezzle or apply to his own private use any money or security received by him under any provision of this act, including the two preceding sections of this title, shall be guilty of a misdemeanor, and any fine imposed, upon a conviction thereof, shall be for the benefit of the common schools of the town.

Id., tit. 4, § 3; 2 R. S. 1154.

The "two preceding sections" referred to are the provisions above given, relating to gospel and school lots, and money in hands of overseer of poor.

**§ 96. Supervisor to call District School Meeting, When.**—Whenever the time for holding the annual meeting in school districts shall pass without such meeting

being held in any district, a special meeting shall thereafter be called by the trustees, or by the clerk of such district, for the purpose of transacting the business of the annual meeting; and if no such meeting be called by the trustees or the clerk within twenty days after such time shall have passed, the supervisor or superintendent of public instruction may order any inhabitant of such district to give notice of such meeting in the manner provided in the second section of this title, and the officers of the district shall make to such meeting the reports required to be made at the annual meeting, subject to the same penalties in case of neglect; and the officers elected at such meeting shall hold their respective offices only until the next annual meeting, and until their successors are elected and shall have qualified as in this act provided.

2 R. S. 1160, or chap. 555, Laws of 1864, tit. 7, § 10.

### § 97. Notice to be Given Thereof.

TO C. D., A TAXABLE INHABITANT OF SCHOOL DISTRICT NO. , IN THE TOWN OF :

WHEREAS, The annual meeting in said district has not been held for the year at the date prescribed by law, and no special meeting thereafter has been called by the trustees or clerk of said district for the purpose of transacting the business of the annual meeting therein, and more than twenty days have passed since said date:

You are hereby required to notify every person of full age, residing in said (*neighborhood or*) school district and entitled to hold lands in this State, who owns or hires real property in such school district (*or neighborhood*) liable to taxation for school purposes, and every resident of such district (*or neighborhood*), who is a citizen of the United States above the age of twenty-one years, and who is the parent of a child or children of school age, some one or more of whom shall have attended the district school for a period of at least eight weeks within one year next preceding the date hereof, and every such person, not being the parent who shall have permanently residing with him or her, such child or children, and every such resident or citizen as aforesaid, who owns any personal property assessed on the last preceding assessment-roll of the town, exceeding \$50 in value, exclusive of such as is exempt from execution, that a special district meeting of said district is hereby appointed to be held at , at o'clock of the day of next, for the purpose of electing officers and transacting the business of the annual meeting, as prescribed by sections 10 and 16 of title 7 of the General School Act.

You are required by law to read this notice in the hearing of each inhabitant qualified as above described, or in case of his absence from home, to leave a copy of so much thereof as relates to the time and place of such meeting at the place of his abode at least six days before the time of the meeting.

Dated this day of , 1886.

A. B.,  
SUPERVISOR OF THE TOWN OF .

**§ 98. Apportionment of Valuation of Railroads among School Districts.**—It is the duty of the town assessors, within fifteen days after the completion of their annual assessment lists, to apportion the valuation of the property of each and every railroad, telegraph, telephone and pipe-line

company, as appears on such assessment list, among the several school districts in their town in which any portion of said property is situated, giving to each of said districts their proper portion, according to the proportion that the value of said property in each of such districts bears to the value of the whole thereof in said town.

Chap. 694, Laws of 1867, § 1, as amended by chap. 414, Laws of 1884.

Such apportionment shall be in writing, and shall be signed by said assessors, or a majority of them, and shall set forth the number of each district and the amount of the valuation of the property of each railroad, telegraph, telephone and pipe-line companies apportioned to each of said districts; and such apportionment shall be filed with the town clerk by said assessors, or one of them, within five days after being made, and the amount so apportioned to each district shall be the valuation of the property of each of said companies, on which all taxes against said companies in and for said districts shall be levied and assessed until the next annual assessment and apportionment.

Id., § 2.

In case the assessors shall neglect to make such apportionment, it shall be the duty of the supervisor of the town, on the application of the trustees, or board of education of any district, or of any railroad, telegraph, telephone or pipe-line company, to make such apportionment, in the same manner and with the like effect as if made by said assessors.

Id., § 3, as amended by chap. 340, Laws of 1885.

In case any alteration shall be made in any school district affecting the property of any railroad, telegraph, telephone or pipe-line company, the officer making such alteration shall, at the same time, determine what change in the valuation of said property in such district would be just, on account of the alteration of district, and the valuation shall be accordingly changed.

Id., § 5.

### **§ 99. Women Eligible to Vote at School Meeting and to Serve as School Trustees.**

—No person shall be deemed to be ineligible to serve as any school officer, or to vote at any school meeting, by reason of sex, who has the other qualifications now required by law.

Chap. 9, Laws of 1880.

### **§ 100. Under Compulsory Education Act.**

—The trustee or trustees of any school district, the president of



any union school, or such officer as the board of education of a city, incorporated village or town may designate, is to report in writing all violations of this act to the treasurer or chief fiscal officer of his city, or to the supervisor of the town.

Chap. 421, Laws of 1874, § 5; 2 R. S. 1206.

Penalties for violation thereof are to be paid to such officers or said supervisor, which penalties, when paid, are to be added to the public school money of said school district.

Id., § 5.

The trustee, in case the parent, guardian or other person having control of any child between eight and fifteen years of age is unable to provide such child for said fourteen weeks with text-books \* \* \* and shall so state in writing to said trustee, shall provide the text-books for fourteen weeks at the public school, and the expense of the same shall be paid by the treasurer of the city or the supervisor of the town on the certificate of said trustee, specifying the items furnished for the use of said child.

Id., § 6.

It does not say from what fund this shall be paid.

Actions for such fines and penalties are to be brought in the name of said treasurer, chief fiscal officer of the city or the supervisor of the town, but shall be brought under the direction of said trustees.

Id., § 9.

**§ 101. Supervisor may Receive Real or Personal Estate in Trust.**—The supervisor may receive in trust, for the benefit of common schools within his town or part thereof, any real or personal estate.

2 R. S. 1150; chap. 555, Laws of 1864, § 15, tit. 3

## IN RESPECT TO DOGS.

**§ 102.** There are, apparently, three different general statutes in relation to the taxation of dogs and the disposition of the moneys arising therefrom;

### FIRST, UNDER THE REVISED STATUTES:

These require a tax to be levied annually upon dogs; the assessor inserting upon the assessment-roll the name of every person owning or harboring a dog, together with the number of dogs and bitches, which is to be returned to the supervisor and by him laid before the

board of supervisors, to be by them levied and collected in the same manner that other taxes are collected.

If any person duly assessed shall refuse or neglect to pay the tax so assessed within five days of the demand thereof, it shall be lawful for any person, and it shall be the duty of the collector to kill the dog so taxed.

3 R. S. 2116, §§ 1, 3.

Each collector is allowed for collection ten per cent of the tax collected; and for every dog or bitch killed, \$1, on filing his affidavit with the county treasurer that the dog or bitch has been killed as above required.

Id., § 7.

The moneys so collected shall be paid to the county treasurer, and shall constitute a fund for the satisfying such damages as may arise, in any year, from dogs killing or injuring sheep, and the residue thereof is for the use of the poor of the county.

Id., § 8.

The owner or possessor of any dog that shall kill or wound any sheep or lamb is liable for the value thereof.

Id., § 9.

If the party so injured cannot discover the owner or possessor of the dogs by which the injury was done, or shall fail to recover the value thereof from such owner or possessor, he may apply to the supervisor, produce a certificate from the fence viewers and his affidavit of the facts above, and the supervisor shall lay the same before the board of supervisors at their next meeting who, if satisfied that such owner or possessor has not been discovered, or of the failure to recover as aforesaid, shall issue their order to the county treasurer for the amount, who shall pay therefor out of said fund.

Id., §§ 12, 13.

If, after receiving the amount of such damages from the county treasurer, the owner of the sheep killed or injured shall recover any part of the value thereof, from the owner or possessor of the dog, he shall refund and repay the sum so received to the county treasurer. In case he refuses to so repay it, the supervisor must bring an action in the name of the county treasurer and pay into the county treasury the sum so collected.

Id., § 14.

The owner or possessor of every dog to whom notice shall be given, of any injury done by his dog to any sheep, or of his dog

having chased or worried any sheep, shall, within forty-eight hours after such notice, cause such dog to be killed ; for every neglect so to do, he shall forfeit \$2.50 and the further sum of \$1.25 for every forty-eight hours thereafter until such dog be killed, unless it shall satisfactorily appear to the court before which suit shall be brought for the recovery of said penalties, that it was not in his power to kill such dog.

Id., § 16.

The supervisor shall commence suit in his name of office for the recovery of these penalties.

Id., § 19.

The moneys recovered are to be paid to the county treasurer.

## SECOND, UNDER THE ONTARIO COUNTY ACT:

**§ 103.** The taxes upon dogs, in counties adopting this act, are levied and collected as under the Revised Statutes, but the moneys collected therefrom are paid to the supervisor of the town, and constitute a fund for paying damages arising in said town from dogs killing or injuring sheep ; the balance thereof in the supervisor's hand, after a year, may by a majority vote at town meeting, be appropriated for building and repairing roads and bridges, or for the contingent expenses of the town.

3 R. S. 2120, §§ 1 and 2 ; chap. 197, Laws of 1864, §§ 1 and 2.

The fence viewers inquire into any damages claimed, and make the certificate as under the Revised Statutes, which certificate is presented to the board of town auditors for audit ; if so audited, they give an order on the supervisor for the amount allowed, who pays the same out of the dog fund.

Id., § 4.

Whenever the amount of the orders for such damages exceed the amount of the dog fund in the supervisor's hands, the board of supervisors may add, to the town accounts, the amount of the orders then due and unpaid ; but such sum shall not exceed the amount theretofore received into the dog fund and diverted therefrom for roads, bridges or contingent expenses as aforesaid.

Id., § 5.

If the owner of the sheep recover from the dog owner the damages sustained by him, he must refund to the supervisor the sum so recovered ; in case of his refusal so to do, the supervisor must sue

therefor, in his name of office, which sum so recovered shall be returned to the dog fund.

Id., § 6.

The supervisor must account with the town auditors for moneys received and disbursed by him under this act.

Id., § 7.

### THIRD, UNDER THE RICHMOND COUNTY ACT:

§ 104. Under this act, the tax is assessed, levied and collected as under the Revised Statutes, except that the amount thereof is smaller; the moneys collected are used for the same purposes, but any residue remaining after satisfying such damages shall, after the expiration of one year, be applied to the support of the poor or to such other purpose as the town meeting shall direct.

Chap. 273, Laws of 1832, and chap. 117, Laws of 1835.

This act applied originally to Richmond, Rockland and Westchester. The law of 1835, above, extended it to Columbia, Dutchess, Allegany and Cattaraugus.

Many local provisions have been passed, by boards of supervisors, under chapter 482, Laws of 1875.

### DEAF-MUTES AND BLIND.

§ 105. **Application to Supervisor.**—Any parent, guardian or friend of a deaf-mute child within this State, over the age of six years and under the age of twelve years, may make application to the overseers of the poor of any town, or to any supervisor of the county where such child may be, showing, by satisfactory affidavit or other proof, that the health, morals or comfort of such child may be endangered or not properly cared for, and thereupon it shall be the duty of such overseer or supervisor to place such child in the New York Institution for the Deaf and Dumb, or in the Institution for the Improved Instruction of Deaf-Mutes, or in the Le Couteulx St. Mary's Institution for the Improved Instruction of Deaf-Mutes in the city of Buffalo, or in the Central New York Institution for Deaf-Mutes in the city of Rome, or in any institution in the State for the education of deaf-mutes.

Chap. 325, Laws of 1863, § 2, as amended by chap. 213, Laws of 1875; 3 R. S. 1943.

In 1874, another statute was passed which reads as follows:

Any parent, guardian or friend of any deaf-mute child within this State, over the age of six years and under the age of twelve

years, may make application to the supervisor of the town or city where such child may be for a permit or order to place such child in the New York Institution for the Deaf and Dumb, or in the Institution for the Improved Instruction of Deaf-Mutes, or in any of the deaf-mute institutions of this State; and it shall be the duty of such supervisor, if in his judgment the means of the child or the parents or parent of such child will not enable them to defray the expense in a public institution, to grant such permit or order, and to cause said child to be received and placed in such one of the institutions of this State for the education of deaf-mutes

§ R. S. 1945.

In 1876, chapter 331, the Western New York Institution for Deaf-Mutes at Rochester, and in 1884, chapter 275, the Northern New York Institution for Deaf-Mutes at Malone, were authorized to receive any deaf-mute child, over six and under twelve years old, by an order from a supervisor or overseers of the poor.

It would be safer, in these cases, to require the proof mentioned in the law of 1863, by affidavit or otherwise, that "the health, morals or comfort of the child may be endangered or not properly cared for," in addition to the other requirements of the several acts above mentioned passed subsequent to 1863.

The supervisor should report to the county treasurer whenever he makes an order sending a child to one of these institutions so that the treasurer may keep a record thereof.

## § 106. Forms.

### APPLICATION FOR THE ADMISSION OF COUNTY PUPILS.

To be Made to and Retained by the Supervisor or Overseer of the Poor.

STATE OF NEW YORK, }  
COUNTY OF , } ss.:

, of the town of , in said county, being duly sworn, says that he is the of , a deaf-mute child, residing in said town, and who was born on the day of , 18 , and that, in consequence of the want of education, the health, morals and comfort of said child may be endangered or not properly cared for; and the undersigned hereby makes application for the said child to be placed in the Central New York Institution for Deaf-Mutes, for support and education, pursuant to chapter 325 of the Laws of 1863, as amended by chapter 213 of the Laws of 1875.

Dated , 18 .

Signed, .

Sworn to, etc.

### CERTIFICATE.

To be Granted by Supervisor or Overseer of the Poor and sent to the institution.

STATE OF NEW YORK, }  
COUNTY OF , } ss.:

I have this day selected , of the town of , county of , son (or daughter) of , who was born on the day of , 18 , as a county

pupil in the Central New York Institution for Deaf-Mutes, for the term of years, from the day of , 18 , to the day of , 18 (he being then twelve years of age), to be educated and supported therein, during that period, at the expense of the county of , in conformity with the provisions of chapter 325, Laws of 1863, as amended by chapter 213 of the Laws of 1875.

Dated , 18 .

*Of the town of .*

## AS TO THE BLIND.

**§ 107.** All blind persons of suitable age and capacity for instruction, who are legal residents of the State, are entitled to the privileges of the New York State Institution for the Blind at Batavia, New York, without charge.

Chap. 744, Laws of 1867; § R. S. 1939.

Applications for admission are made to the board of trustees thereof, but require a certificate from the county judge, county clerk, or the supervisor or town clerk of the town, or the mayor of the city where the applicant resides, setting forth that the applicant is a legal resident of the town, county and State claimed as his or her residence.

*Id.*, § 3, as amended by chap. 616, Laws of 1872.

The certificate in the preceding form can be adapted to these cases.

It is the duty of the parents, guardians or other friends to provide suitable clothing and traveling expenses. If they fail to do so, the trustees shall furnish such clothing, pay such traveling expenses or remove such pupil to the care of the overseers of the poor of his or her township, and charge the cost of the same to the county to which the pupil belongs; provided that the annual amount of such expenditures on account of any one pupil shall not exceed the sum of \$60. And in case of the death of any pupil at the institution, whose remains shall not be removed or funeral expenses borne by the friends thereof, the trustees shall defray the necessary burial expenses and charge the same to his or her county as aforesaid.

Upon the completion of their course of training in the industrial department, the trustees may furnish to such worthy poor pupils as may need it, an outfit of machinery and tools for commencing business, at a cost not exceeding \$75 each, and charge the same to the proper county.

Chap. 744, Laws of 1867, as amended by chap. 463, Laws of 1873.

**Accounts against Counties.**—On October 1st of each year, the trustees shall cause to be made out against the re-

spective counties concerned, itemized accounts, separate in each case, of the expenditures authorized by the preceding section, and forward to the board of supervisors.

The board is required to direct the county treasurer to pay the amount so charged to the treasurer of the institution on or before the first day of March next ensuing.

Id., § 15.

This amount can be collected from the parents or estates of the pupils.

Id., § 16.

In New York, Kings, Suffolk and Queens counties the amount per year is \$50.

Chap. 166, Laws of 1870, § 3.

### MISCELLANEOUS.

**§ 108. To cause Survey to be Made.**—Whenever the supervisor of any town shall be required by the State engineer and surveyor to cause a survey to be made of the bounds of his town, it shall be the duty of such supervisor, within sixty days thereafter, to cause such survey to be made, and to transmit, by mail or otherwise, a map and description thereof to the State engineer and surveyor. The expense of such survey and map shall be defrayed by the several towns, whose bounds, either wholly or in part, shall be described thereby; such expense to be apportioned by the board of supervisors of the county.

If any supervisor shall refuse or neglect to perform the duties enjoined in the last preceding section, he shall forfeit the sum of \$50.

1 R. S. 827, § 9.

**§ 109. Survey of Non-resident Lands.**—Whenever it shall be deemed necessary, by the assessors of any town, to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

2 R. S. 992, § 14.

**§ 110. May Administer Oaths.**—The supervisor of a town, or any ward in any of the cities of this State, has power to administer oaths to persons, necessary in relation to any matter or

thing which may come before such supervisor, or the board of supervisors of which he is a member, in his or their official capacity.

Chap. 69, Laws of 1870, § 1; 1 R. S. 828.

**§ 111. Surplus Moneys.**—Whenever there are surplus moneys, made by the sale of property distrained upon by a collector for the non-payment of taxes, and a controversy arises between the person for whose tax the property was sold, and a person claiming the surplus on the ground that the property sold belonged to him, it is made the duty of the supervisor to receive and retain such surplus moneys until the rights of the claimants can be determined by law.

2 R. S. 1008, § 4.

**§ 112. To receive Moneys for Strays.**—Where horses, cattle or sheep are sold as strays, in pursuance of the Revised Statutes, and the owner of such strays shall not appear and demand of the person selling the same, the residue of the money remaining after paying the lawful fees and charges within one year after the sale—such moneys shall be paid to the supervisor of the town for the use of the town, and his receipt shall be a legal discharge to the keeper of such strays. If the person who shall have sold such strays shall not, within thirty days after the expiration of the year, pay such residuary moneys to the supervisor of the town, he shall forfeit to the town double the sum so remaining in his hands, together with the amount of such residuary moneys.

1 R. S. 830, §§ 27 and 28.

**§ 113. When to act as Guardian in Binding out Orphan Children.**—The act of 1870 (chap. 431, § 1) authorizes the officers of any incorporated orphan asylum or institute, or house for indigent children, to bind out any orphan or indigent child, committed or surrendered to its care, to be clerks, apprentices or servants, until the age of majority. And, by section 2, in case of the death of both parents of such child, the mayor of the city, or the supervisor of the town, within which such asylum or institute may be located, shall be *ex-officio* the guardian of said child for the purpose of enabling the officers of the asylum, etc., to bind out such child.

2 R. S. 1892.

**§ 114. As to Buying and Canceling Town Bonds.**—Under the Laws of 1874, chapter 410, section 3, when the town shall have voted, as provided in that act, to



buy and cancel its bonds by issuing and selling new bonds, the supervisor shall receive from the county treasurer the money derived from the sale of the new bonds, giving security for the same in double the amount received, and shall purchase or pay the old bonds at maturity, and shall cancel the same in presence of the town board. By Laws of 1878, chapter 75, amended by Laws of 1884, chapter 244, and also by Laws of 1881, chapter 522, and chapter 316, Laws of 1886, provision is made for the retirement of town and county bonds and the issuing of new bonds. These statutes will be found in chapter of this book.

1 R. S. 868, 869.

**§ 115. As to Payment of Bonded Debt of Railroads** — Upon the application in writing of at least twelve citizens, tax payers of any town in this State, addressed to the supervisor of such town, asking for the payment, in whole or in part, of the bonded indebtedness of such town created in aid of any railroad therein, specifying the amount of such indebtedness to be paid, and how much thereof shall be paid annually, and asking also for a vote of the people of such town upon the question, the time and the amount of such payment, the said supervisor shall, at the next annual town meeting to be held in such town, submit such question to the qualified voters of such town, and shall take the votes thereof in the manner following, to-wit: The said supervisor shall have prepared a suitable book in which shall be transcribed a copy of the aforesaid application, underwritten with the names of the signers thereof, and shall open the same, at the time of the opening of the polls of such town meeting, for the signatures of the qualified voters of such town, by reading aloud to the people the said application and the names of its signers. The said voters, together with other individuals paying taxes in said town, who shall favor such application, may, during the time the polls of such town meeting are open, subscribe in such book such transcribed application, or may authorize the clerk of such town to subscribe the same for him or her. And any solvent moneyed, manufacturing or other corporation or company formed under the laws of this State and being assessed on real or personal property in such town, shall have all the rights and privileges under this act, so far as property representation is concerned, as other tax payers, to be exercised by its chief financial officer.

Immediately after the close of the polls at such town meeting, the said supervisor shall affix his certificate next succeeding the last

name subscribed in such book, to the effect that the persons whose names are subscribed in such book are qualified voters of such town, or tax payers therein, and assented to the proposition submitted in the said application at such town meeting, and shall forthwith, and within five days after such town meeting, transmit the said books so completed to the county judge of his county; and it shall be the duty of said judge forthwith and within ten days thereafter, to proceed to take proof as to the relative number and assessed property represented by such voters; and if it shall appear satisfactorily to him that the persons who had so signed said application, and such other tax payers of said town as may then and there appear before him and express a desire to subscribe the same, do represent a majority of the tax payers of said town, as shown by the last preceding tax list or assessment-roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine and cause the same to be entered of record, and shall forthwith certify the same to the board of supervisors of his county, to whom he shall also transmit such book, with its contents.

It shall thereupon be the duty of the said supervisors, in accordance with the terms and request of such application, to cause to be assessed, levied and collected in such town as other taxes in such town are assessed, levied and collected, in each year, as the same is designated in such application, such sum or sums as shall be sufficient to pay off and discharge the said bonded indebtedness, either at one time and by one assessment, or by installments of yearly assessments and payments as may be designated in such application.

The money so assessed, levied and collected shall be sacredly applied to the payment of the bonds of such town so given in aid of railroads, as designated in such application, and to no other purpose whatever; except that in case there shall not be of such bonds as are then due and payable sufficient in amount to exhaust the whole sum so collected, and the holders and owners of such other bonds as may not then have matured, shall not be willing to accept payment thereof, the said supervisors shall cause the residue of said money so collected, after paying such bonds as he may be able to retire, to be invested in such State, county, town, city or village bonds as may have been issued in pursuance of the laws of this State, or in United States bonds, to be deposited with the treasurer of said county as a sinking fund, for the redemption and payment of the bonds of such town created in aid of any railroad therein,

and the avails of such sinking fund shall be sacredly applied for the payment and redemption of the bonds of such town as the same become due.

Chap. 328, Laws of 1875.

**§ 116. Sale of Stock and Bonds of Bankrupt Railroads.**—By chapter 585, Laws of 1875, on the application of the supervisor the railroad commissioners are authorized to sell the stock or bonds of any railroad adjudicated bankrupt or in the hands of a receiver, and the moneys received therefor shall be paid over to the supervisor and applied by the town, after deducting the expenses of the sale, to the payment of bonds issued by the town in aid of the railroad, and any balance thereafter is applied to such other debts or charges as the qualified voters may direct.

**§ 117. To Supply Vacancy in Office of Auditor.**—In case of a vacancy in the board of town auditors, by neglect or refusal to accept, death or removal, the supervisor of the town where the vacancy occurs may appoint some suitable and competent person to fill such vacancy until the next annual town meeting. (Form 2 may easily be adapted to this purpose.)

Laws of 1875, chap. 180, § 5; 1 R. S. 837.

This act of 1875 applies to but few of the counties and towns of the State, viz. : to the towns of Ausable, Champlain, Peru and Plattsburgh, in the county of Clinton; the town of Lenox, in Madison county, and the towns of Queensbury, Chester and Caldwell, in Warren county, and to Essex county.

Chap. 130, Laws of 1883.

In some counties special laws exist for electing town auditors and for supplying vacancies in such office by the supervisor.

In most of the counties the town board is composed of the supervisor, town clerk, the justices of the peace, or any two of said justices, and the above provisions of law do not apply to such counties.

**§ 118. Attend Board of Supervisors.**—The supervisor of each town shall attend the annual meeting of the board of supervisors of the county, and every adjourned or special meeting of such board, of which he shall have notice.

1 R. S. 827, § 6.

**§ 119. Duties under the Drainage Act.**—The act of May 12, 1869, to amend the Revised Statutes, relative to proceedings for the draining of swamps, etc., authorizes the super-

visor of any town to make an application, on behalf of the town, to the county court by petition for the appointment of three commissioners to drain such lands.

Chap. 888, Laws of 1869, §§ 1, 16; 3 R. S. 2448.

See Water commissioners' duties, § 141.

Many local statutes concerning this subject have been passed since 1869, and it would be safer to consult such acts for the counties specified therein, before proceeding in these cases.

## **§ 120. Supervisor of Towns or Mayor of Cities to Appoint Annually one or more Inspectors of Vinegar—Duties of such Inspector.**

CHAP. 606.

AN ACT in relation to the manufacture and sale of vinegar.

PASSED June 9, 1886; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Every person who manufactures for sale, or offers or exposes for sale as cider vinegar, any vinegar not the legitimate product of pure apple juice, known as apple cider, or vinegar not made exclusively of said apple cider, or vinegar into which foreign substances, drugs or acids have been introduced, as may appear by proper test, shall for each offense be punishable by fine of not less than \$50 nor more than \$100.

§ 2. Every person who manufactures for sale, or offers for sale, any vinegar found upon proper tests to contain any preparation of lead, copper, sulphuric acid, or other ingredient injurious to health, shall for each such offense be punishable by fine of not less than \$100.

§ 3. The mayor of cities shall, and the supervisor of towns may, annually, appoint one or more persons to be inspectors of vinegar, who shall be sworn before entering upon their duties, and who shall have power and authority to inspect and examine all vinegar offered for sale.

§ 4. No person shall by himself, his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver, or have in his custody or possession, with intent to sell or exchange, or expose or offer for sale or exchange any adulterated vinegar, or label, brand or sell as cider vinegar, or as apple vinegar, any vinegar not the legitimate product of pure apple juice, or not made exclusively from apple cider.

§ 5. All vinegars shall be without artificial coloring matter, and shall have an acidity equivalent to the presence of not less than four and one-half per cent, by weight, of absolute acetic acid, and in the case of cider vinegar, shall contain in addition not less than two per cent by weight of cider vinegar solids upon full evaporation over boiling water; and if any vinegar contains any artificial coloring matter or less than the above amount of acidity, or in the case of cider vinegar, if it contains less than the above amount of acidity or of cider vinegar solids, it shall be deemed to be adulterated within the meaning of this act.

§ 6. Every person making or manufacturing cider vinegar shall brand on each head of the cask, barrel or keg containing such vinegar the name and residence of the manufacturer, the date when same was manufactured, and the words "cider vinegar."

§ 7. Whoever violates any of the provisions of this act shall be punished by a fine not exceeding \$100. Any person who may have suffered any injury or dam-

age by reason of the violation of any of the provisions of this act may maintain an action in his own name against any person violating any of the provisions of this act, to recover the penalties provided for such violation, and one-half of the sum recovered shall be retained by him for his own use and the other half shall be paid into the city or county treasury where such offense was committed for the benefit of such city or county.

§ 8. This act shall take effect immediately.

### **§ 121. When Supervisor to Pay Judgment.—**

If the supervisor of a town, against whom any judgment shall have been rendered, which shall not be suspended by writ of error or otherwise, have sufficient moneys in his hands belonging to his town, not specially appropriated, he shall in like manner pay the amount of such judgment and interest thereon, upon the like evidence; and for a failure to do so, he shall in like manner be responsible, personally, to the party in whose favor such judgment was obtained.

If the recovery be had against a town in its own name, the supervisor thereof shall, in like manner and upon the like evidence, pay the amount thereof, with interest, out of any moneys in his hands belonging to such town, not specially appropriated; and for a failure so to do shall be personally responsible for such amount to the party in whose favor such judgment was obtained.

3 R. S. 2403, §§ 105, 106.

**§ 122. Suing for Penalties.**—He shall prosecute in the name of his town, or otherwise as may be necessary, for all penalties of \$50 or under given by law to such town, or for its use, and for which no other officer is specially directed to prosecute.

1 R. S. 826, § 2.

**§ 123. Supervisor may Institute Supplementary Proceedings for Tax.**—When a tax exceeding \$10 in amount, levied by the board of supervisors of a county against a person, firm, estate or corporation, residents thereof, or by the board of trustees of a village against a person, firm, estate or corporation, residents of the county in which such village or the principal part thereof is located, is returned by a town or village collector uncollected, for want of goods and chattels out of which to collect the same, the supervisor of the town or ward, or the county treasurer and the president of a village as to a village tax, within one year thereafter, may apply on affidavit to the county judge, or special county judge of the county, and obtain an order requiring such person, firm, estate or corporation to appear before such county judge, or before a referee named in such order, and answer concerning his,

their or its property. The same proceedings may in all respects be had as in cases supplementary to execution, and the same costs and disbursements may be allowed against the person, firm, estate or corporation examined concerning his, their or its property, but none shall be allowed in his, their or its favor. The tax, if collected, shall be paid over to the county treasurer, or the supervisor of a town to which the same may belong, and, in the case of a village tax, to the treasurer of the village to which the same belongs, and the costs collected shall belong to the party instituting the proceeding, and shall be applied by him to the payment of the expenses of such proceeding. A county treasurer shall have no additional compensation for such proceeding; a supervisor shall have no other compensation except his per diem fees for time necessarily spent in the proceeding, and a president of a village shall have no compensation for such proceeding.

Chap. 361, Laws of 1867, as amended by chap. 640, Laws of 1881.

## § 124. Form of Affidavit therefor.

In the Matter of Proceedings Supple-  
mentary for the Collection of Taxes  
from J. C.

STATE OF NEW YORK, } ss.:  
ONEIDA COUNTY, }

Henry Lancaster, being duly sworn, says.

That he is the supervisor of the town of \_\_\_\_\_, in said county.

That from the 1st day of January, 1884, to the date hereof, said J. C. has been, and now is, an actual resident and inhabitant of said town, and during all of said period of time has been, now is, and on July 1, 1884, was, the owner and occupant and in possession of certain real estate situated in said town, which said real estate was liable and subject to taxation in said town and county for the taxes and purposes prescribed by law.

That, in pursuance of the statutes in such cases made and provided, and on July 1, 1884, the assessors of said town duly listed, valued and assessed the property in said town liable to taxation, both real and personal, including said real estate of said J. C., and duly entered the same upon the assessment-roll of said town, and thereafter, and on or before August 1, 1884, duly completed said assessment-roll and gave due public notice thereof as prescribed by law, and duly reviewed their said assessments at the time and place specified in said notice, to-wit: on the third Tuesday of August, 1884, at the town hall in said town; and subsequent to said last-named date, duly verified said assessment-roll, which was thereafter, and on or about November 10, 1884, duly delivered to the board of supervisors of said county at their next meeting. That in said assessment-roll of said town of \_\_\_\_\_, when so delivered to said board, said real estate was duly assessed to said J. C. at the valuation of \$ \_\_\_\_\_.

That in December, 1884, said board of supervisors duly levied, extended and entered a tax upon the inhabitants of said town and county, and upon the property mentioned and described in the assessment-rolls of the several towns of said

county, and in said assessment-roll of the town of , so delivered to them as aforesaid, and duly issued their warrant under the hands and seals of the members of said board, for the collection of said tax so levied by them as aforesaid, in the manner and form prescribed by law, to the several collectors of said county and to the collector of the said town of .

That in and by said tax-list, warrant and said assessment-roll, in and for said town of , a tax of \$ was duly levied, extended and entered against said J. C., and against said real estate, and said tax-list, warrant and assessment-roll last above mentioned were duly delivered to the collector of said town of , for collection by him as prescribed by law.

That thereafter said warrant to said collector of the said town of was, on the day of , 1885, duly returned by him with the said tax of \$ against the said J. C. wholly uncollected, for want of goods and chattels out of which to collect the same, and said tax against said J. C. still remains wholly unpaid.

That only (*three months*) have elapsed since said warrant and said tax against said J. C. were returned wholly uncollected as aforesaid. That no previous application has been made for an order to examine said J. C. upon said uncollected tax and warrant. (\*)

Dated *March* , 1885.

HENRY LANCASTER.

Sworn to before me this }  
day of , 1885. }

See Matter of Conklin. 36 Hun, 588; Inman v. Coleman, 37 id. 170.

## § 124a. Order thereon.

In the Matter of Proceedings Supple-  
mentary.

It having been made to appear to me by the affidavit of Henry Lancaster, dated , 1885, that (*here insert the allegations in said affidavit down to the asterisk (\*)*), and that said tax exceeds \$10 in amount and was duly levied by the board of supervisors of Oneida county against said J. C., a resident of said town of and said county, and that a warrant for the collection thereof against said J. C. has been duly issued to the collector of said town upon said tax and that such warrant and tax against said J. C. has been duly returned by said collector, wholly uncollected for want of goods and chattels out of which to collect the same, and still remains wholly unpaid.

I do, therefore, hereby order that it be referred to , Esq., of , to examine the said J. C. and take his answers on oath concerning his property, and to reduce such answers and examination to writing; and also to examine on oath such witnesses as may be offered by the respective parties, and reduce such examination to writing, and report such answers and examinations, and all his proceedings under and by virtue of this order, to me, with all convenient speed. And I do hereby appoint the said a referee in this action for the purposes aforesaid.

And I do also further order and direct the said J. C. to appear before the said referee, at in the of , on the day of , 18 , at o'clock in the noon, to answer before said referee concerning his property as aforesaid; and for that purpose to appear before the said referee from time to time, as he shall direct and appoint.

And the said J. C. is hereby forbidden from making or suffering any transfer or other disposition of, or interference with, the property of said J. C. not exempt from levy and sale by virtue of an execution, until further direction in the premises.

Dated the day of , 18 .

## **§ 125. II. His Duties in Connection with Other Town Officers.**

### **FIRST WITH OVERSEER OF THE POOR AND OTHER SUPERVISORS.**

#### **. DUTIES ON THE DIVISION OF A TOWN.**

**§ 126. How Lands disposed of.**—When a town seized of lands shall be divided into two or more towns, the supervisors and overseers of the poor of the several towns constituted by such division shall meet as soon as may be after the first town meetings subsequently held in such towns, and when so met, shall have power to make such agreement concerning the disposition to be made of such town lands and the apportionment of the proceeds as they shall think equitable, and to take all measures and execute all conveyances which may be necessary to carry such agreement into effect.

1 R. S. 806, § 4.

**§ 127. On Alteration of a Town.**—When any such town shall be altered in its limits, by the annexing of a part of its territory to another town or towns, the supervisors and overseers of the poor of the town from which such territory shall be taken, and of the town or towns to which the same shall be annexed, shall, as soon as may be after such alteration, meet for the purpose and possess the powers provided in the last preceding section.

Id., § 5.

**§ 128. If no Agreement be Made, Land to be Sold.**—If no agreement for the disposition of such lands shall be made by the supervisors and overseers within six months after such division or alteration, then the supervisor and overseer of the poor of each town in which any portion of such lands shall lie shall proceed, as soon as may be, to sell and convey such part of said lands as shall be included within the limits of such town, as fixed by the division or alteration; and the proceeds arising from such sale shall be apportioned between the several towns interested therein by the supervisors and overseers of the poor of all the towns, according to the amount of taxable property in the town divided or altered as the same existed immediately before such division or alteration, to be ascertained by the last assessment-list of such town.

Id., § 6.



**§ 129. Personal Property, how Apportioned.**

—When a town possessed of or entitled to money, rights and credits, or other personal estate, shall be so divided or altered, such personal estate, including moneys belonging to the town, in the hands of town officers, shall be apportioned between the towns interested therein, by the supervisors and overseers of such towns (who shall meet for that purpose as soon as may be after the first town meeting subsequently held in such towns), according to the rule of apportionment above prescribed.

Id., § 7.

**§ 130. Meeting under this Title, how Called.**

—Whenever a meeting of the supervisors and overseers of the two or more towns shall be required, in order to carry into effect the provisions of this article, such meeting may be called by either of said supervisors; but the supervisor calling the same shall give at least three days' notice, in writing, to all the other officers, of the time and place at which such meeting is to be held.

Id., § 8.

**§ 131. Cemeteries Excepted.**—The preceding sections shall not, however, apply to any cemetery or burial-grounds; but the same shall belong to the town in which it may be situated, after a division shall have been made.

Id., § 9.

**§ 132. Debts to be Apportioned.**—Debts owing by a town so divided or altered shall be apportioned in the same manner as the personal property of such town, and each town shall thereafter be charged with its share of such debts according to such apportionment.

Id., § 10.

**§ 133. Gospel and School Lots.**—Nothing contained in this title shall apply to any of the lots heretofore granted by the people of this State to any town for the support of the gospel and of schools, commonly called the gospel and school lots.

Id., § 11.

**SECOND. WITH COMMISSIONERS OF HIGHWAYS AND JUSTICES OF THE PEACE.**

**§ 134. Duty in Case of Fire in Woods.**—Whenever the woods in any town shall be on fire, it shall be the duty of the justices of the peace, the supervisors and the commissioners of highways of such town and of each of them, to order

such and so many of the inhabitants of such town liable to work on the highways and residing in the vicinity of the place where such fire shall be, as they shall severally deem necessary, to repair to the place where such fire shall prevail and there to assist in the extinguishing the same or in stopping its progress.

§ R. S. 2086.

A person who, having been lawfully ordered to repair to the place of a fire in the woods and assist in extinguishing it, omits, without lawful excuse, to comply with the order, is guilty of a misdemeanor.

Penal Code, § 414.

### THIRD. WITH COMMISSIONERS OF HIGHWAYS.

**§ 135. 1. May Agree for Use of Highway by Plankroad Company.** — Whenever it shall be necessary for any such company to use any part of a public highway for the construction of a plank or turnpike road, the supervisor and commissioner of highways of the town in which such highway is situated, or a majority, if there be more than one such commissioner in such town, may agree with such company upon the compensation and damages to be paid by said company for taking and using such highway for the purposes aforesaid. Such agreement shall be in writing, and shall be filed and recorded in the town clerk's office of such town. In case such agreement cannot be made the compensation and damages for taking such highway for such purpose shall be ascertained in the same manner as the compensation and damages for taking the property of individuals. Such compensation and damages shall be paid to the said commissioners, to be expended by them in improving the highways of such town.

Laws of 1847, chap. 210, § 26; 2 R. S. 1332.

But the supervisor and commissioners cannot make the agreement as above provided without they first obtain the consent in writing of at least two-thirds of all the owners of land along such highway who shall actually reside on that part of the highway on which such plankroad or turnpike road is to be constructed.

Chap. 71, Laws of 1850, § 5; 2 R. S. 1341, § 5; see chap. 398, Laws of 1847.

The town officers have not power to grant this right to use the highway on condition that the company shall erect and maintain its toll-gates in specified localities, nor are they authorized to make the agreement granting this right, and as a consideration therefor, obligating it not to locate and maintain a toll-gate within a specified limit. An action cannot be brought by the supervisors and commissioners of highways, in their joint names as such officers, on a contract made by them on behalf of the town, which contains no express agreement with them, as such officers.

Palmer v. Fort Plain and Cooperstown Plank Road Co., 11 N. Y. 376.

An agreement by which the company, as consideration for the agreement, agrees to keep the road in repair without expense to the town, has been held to be a valid contract.

People v. Fishkill and Beekman Plank Road Co., 27 Barb. 445; Town of Fishkill v. Fishkill and Beekman Plank Road Co., 22 id. 634.

## § 136. Form of Agreement.

### AGREEMENT TO USE HIGHWAY FOR PLANKROAD, ETC.

This agreement, made this *third* day of November, 1867, between A. B., as supervisor of the town of Pittstown, county of Rensselaer, and C. D. and E. F., as commissioners of highways of said town, of the first part, and the Northern Turnpike Company of the second part.

Witnesseth, that the said party of the first part, having first become satisfied that at least two-thirds of all the owners of land along the highway (*describe it*), and who actually reside thereon, have consented in writing to the construction of a turnpike by said party of the second part, on such highway, do, in consideration of the sum of \$500, hereby grant and convey to the said party of the second part, the right to use and occupy the public highway above described, for the purpose of a turnpike road, so long as the same shall be needed therefor by said party of the second part.

In witness whereof, etc.

Sign and Seal.

[Add Acknowledgment.]

File and record in the town clerk's office.

## 2. TO PROVIDE FOR CARE AND PRESERVATION OF STATE BOUNDARY MONUMENTS.

§ 137. The supervisors and commissioners of highways of any and all towns of this State which may adjoin any of the boundary lines of the State are hereby charged with the care and preservation of the monuments which have heretofore been placed, or may hereafter be placed, by official action, to mark the said boundary lines. And the said supervisors and commissioners of highways are hereby required to enforce the statutes of this State for the preservation of monuments and landmarks, so far as they may relate to said boundary monuments, and to prosecute any person who may injure, disturb or remove any of them.

§ 138. Said supervisors and commissioners of highways are hereby required annually in the spring to make an examination and inspection of the condition of all said boundary monuments upon the State boundary adjoining their respective towns, and to make a detailed report thereof to the State engineer; their fees for such services shall be a town charge, to be audited upon the presentation of the certificate of said State engineer and surveyor that such report has been filed as a voucher.

§ 139. The said State engineer and surveyor, upon the passage

of this act, is authorized and directed to transmit a copy thereof to the supervisor of each town adjoining any of the boundary lines of the State, upon which monuments may be placed, with such instructions as he may deem necessary. And he is hereby further authorized to take such action as may be necessary for the enforcement of this act in the case of the neglect of any of the town officers aforesaid to comply with the requirements of sections 1 and 2 of this act.

§ 140. This act shall take effect immediately.

Chap. 449, Laws of 1886.

## POWERS AND DUTIES AS WATER COMMISSIONER.

§ 141. **Supervision of Dams, Drains and Ditches.**—Section 16 of chapter 883 of the Laws of 1869 provides that the supervisor and the commissioners of highways of the several towns, and the president of any incorporated village, as to lands within such village, shall be water commissioners of their respective towns, and in addition to the powers now conferred by law upon them, they shall have the general charge and supervision of all the dams, drains, ditches and channels made, completed or constructed in said towns under this act. Whenever it shall be necessary to open, deepen, repair, change, or do any work to maintain and keep in repair any such dams, ditches, drains or channels, and disputes shall arise between the owners of the lands on which such dams, drains, ditches or channels are situate, regarding the same, the said water commissioners, or a majority of them, shall take proceedings similar to those authorized hereby, to be taken and had for the construction of such works, and the said water commissioners are hereby invested for such purpose with powers conferred upon original commissioners by this act. And where improvements of a nature and character similar to those hereby authorized shall have been made under the provisions of any special act, it shall be lawful for the county court of the county to cause the same hereafter to be maintained, kept in repair and improved by the said water commissioners of the town or towns under the provisions of this act; and the said water commissioners shall have like power and authority in all cases of subsoil or tile draining, when such subsoil or tile draining shall be, in their judgment, absolutely necessary for public or sanitary purposes, and the owner or occupant of any land which such owner or occupant shall be desirous of so draining for such purposes, shall have to cross the lands of another, in order to get an

outlet, and the owners of such lands shall not be able to agree in regard thereto; and the said water commissioners shall have power and authority to make all such needful rules and orders in regard to subsoil or tile draining as shall be necessary to promote and secure the proper drainage of all farming lands by the owners thereof, who shall desire to drain the same for public or sanitary purposes, without doing unnecessary injury to others, or to the public highways in which such drain may be discharged; provided that in all cases where an easement for such drains shall be procured upon the lands of another, the said drains shall be neatly, safely and expeditiously put down and covered, and the surface restored as nearly as may be to its original appearance. And no drains, ditches or other channels for free passage of water authorized by this act shall be put across any door yard, inclosed garden, orchard or vineyard, nor shall any tree or building be removed without the owner's consent.

3 R. S. 2455, § 16.

The statute relating to drainage is quite lengthy, complicated and technical. It may be found in 3 Rev. Stat. 2448, and amendments in chapter 636, Laws of 1886. If proceedings of this character are to be instituted, it would be safer to put the matter into some competent attorney's hands, rather than to run the risk of the loss and annoyance that would result in a layman's attempt to carry them on. For this reason the statute is not inserted fully.

### 3. WITH THE JUSTICES OF THE PEACE.

**§ 142. To Control Town-house.**—Where a town has purchased a site and erected a town-house, it is controlled by the supervisor and the justices of the peace, or a majority of them.

Chap. 197, Laws of 1847, as amended by chap. 267, Laws of 1879; 1 R. S. 852.

This does not apply to those cases in which the town-house is located in an incorporated village, which has contributed to the expense of such building and site. The latter are governed by chapter 456, Laws of 1884.

**§ 143. To Lease Public Building to Grand Army Post.**—An act was passed in 1886 authorizing the *board of trustees of towns* to lease, not exceeding five years, to any post of the Grand Army of the Republic, established in such town, to be used by such post, any public building, or any part thereof, belonging to such town, except school-houses in actual use as such, at a nominal rent, to be fixed by such board.

Chap. 644, Laws of 1886.

As there is no board of trustees in towns, it is doubtful what town officers are meant to be invested with these powers.

Doubtless, in the case of a *town-house*, the supervisor and justices of the peace, or a majority of them, might act under this statute, and lease such town-house.

**§ 144. To Appoint Town Sealer.**—A town sealer of weights and measures shall be appointed by the supervisor and justices of the peace of the town, and shall hold his office during their pleasure.

Laws of 1851, chap. 134, § 22; 2 R. S. 1848.

If no town sealer is appointed the county sealer acts.

Id., § 21.

See form of order below.

#### ORDER APPOINTING SEALER OF WEIGHTS.

TOWN OF PITTSBURY, }  
COUNTY OF RENSSELAER, } ss.:

We, the undersigned supervisor and justices of the peace of the town of Pitts-  
town, in the county of Rensselaer, having met and deliberated on the subject of  
this order, do by virtue of the power vested in us by the statute, hereby  
appoint John Jones, of said town, sealer of weights and measures therein.

In witness whereof we have hereto placed our hands this 3d day of March,  
1867. (Signed.)

**§ 145. To Appoint Firemen.**—The supervisor and jus-  
tices of the peace, for the time being, of any town of this State, may  
appoint in writing any number of the inhabitants of the said town,  
not exceeding forty to each fire engine, which may be procured for  
the extinguishment of fires in said town; the persons so appointed  
shall be firemen of the said town, but no such company shall be  
formed pursuant to this act in any incorporated city or village; and  
all such firemen, and all the members of any fire company, or of  
any hook and ladder company, appointed pursuant to any law of  
this State, shall, while they are such firemen or members, be  
exempt from serving on juries in courts of record, and, except in  
cases of war, insurrection or invasion, from militia duty.

Laws of 1832, chap. 222, as amended 1845, chap. 244; 1 R. S. 851, § 1.

All vacancies in such company are filled by the supervisor and  
justices.

Id., § 4.

The form of an order so appointing may be adapted from the preceding one.

**§ 146. To Appoint Collector.**—If any person chosen  
or appointed to the office of collector of any town or ward in this  
State shall refuse to serve, or shall die, resign or remove out of the

town or ward, before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same, by reason of sickness or any other cause, the supervisor and any two justices of such town or ward shall forthwith appoint a collector for the remainder of the year, who shall give the like security, and be subject to the like duties and penalties, and have the same powers and compensation as the collector in whose place he was appointed; and the supervisor shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector, or his sureties, from any liability incurred by him or them.

2 R. S. 1009, § 11.

For form of appointment see next subdivision.

If a warrant shall have been issued by the board of supervisors prior to such appointment, the original warrant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same powers as if originally issued to him; but if such warrant cannot be obtained, the clerk of the board of supervisors makes out a new one, which shall be directed to the collector so appointed.

Id., § 12.

Upon every such appointment the supervisor, if he think it necessary, may extend the time limited for the collection of taxes for not exceeding thirty days, of which extension he shall forthwith give notice to the county treasurer.

Id.

#### ORDER APPOINTING COLLECTOR.

WHEREAS, a vacancy has occurred in the office of collector of taxes of the town of Hoosick, by reason of the death (*refusal to serve, or as the case may be*) of G. H., heretofore elected to said office from said town,

Now, therefore, by virtue of the power vested in us by statute, in such case made and provided, we, the undersigned, supervisor and two justices of said town, do hereby, in order to fill the vacancy, appoint C. A. collector of said town, to hold said office until the next succeeding annual town meeting of said town, as provided by law.

In witness whereof we have hereto set our hands this 10th day of July, 1869.

(Signatures.)

**§ 147. Vacancies in Board of Excise.**—Such vacancies are filled by appointment by the supervisor and justices of the peace, or a majority of them, until the next annual town meeting, at which meeting such vacancy is filled by election.

Chap. 444, Laws of 1874, § 1; 3 R. S. 1990.

The preceding form may be adapted to such an appointment.

**§ 148. Certain Towns and Cities Authorized to sell Railroad Stock.**—The several towns, cities and villages in the counties of Chenango, Delaware, Madison, Ulster, Sullivan, Cortland, Orange, Cayuga and Oswego, the towns of Pittsfield and Edmeston in Otsego county, and the town of Vienna, Oneida county, were authorized to sell all or any part of the capital stock of the New York and Oswego Midland railroad now owned by either of them, and the several towns and villages in Chenango county, all of the Utica, Chenango and Susquehanna Valley railroad capital stock owned by them.

No sale was to be made by the railroad commissioners, or the supervisor when there were no railroad commissioners, without the approval and consent in writing of a majority of the justices of the peace in all towns where the supervisor acted as such commissioner, in other towns, of the supervisor and a majority of the justices of the peace.

Chap. 21, Laws of 1880, amended by chap. 308, Laws of 1881.

#### 4. WITH JUSTICES OF THE PEACE AND TOWN CLERK.

**§ 149. Duty as to Purchase and Building Town-house.**—Where the electors of a town vote to purchase a site and erect a town-house, such site is to be purchased and the house erected by the supervisor, town clerk and the justices of the town. The conveyance of the site is to be made to the town.

Laws of 1847, chap. 197, as amended by Laws of 1879, chap. 287; 1 R. S. 852.

But if such town-house is erected jointly by a *village and the town*, within the village limits, the care and management thereof is to be agreed upon by the board of trustees of the village, and the town board.

Chap. 456, Laws of 1884, § 3.

**§ 150. Vacancy in Office of Justice of the Peace.**—Whenever a vacancy shall occur in the office of justice of the peace of any town in this State, the supervisor, town clerk and remaining justices of the peace, or a majority of such officers, are hereby authorized, by warrant under their hands and seals, to appoint a suitable person to fill said vacancy.

Chap. 476, Laws of 1859, as amended by chap. 166, Laws of 1875; 1 R. S. 823.

See form below.



Such appointment must be filed in the town clerk's office, and a copy thereof in the county clerk's office, before the person so appointed is authorized to act.

Id., § 2.

The person so appointed holds his office until the next regular town meeting, unless said appointment shall have been made to fill the vacancy of an officer whose term of office would have expired on December thirty-first next succeeding such appointment; in which case the term of office of the person so appointed shall expire on the thirty-first day of December next succeeding such appointment.

Id.

## ORDER APPOINTING JUSTICE OF THE PEACE TO FILL VACANCY.

COUNTY OF RENSSELAER, }  
TOWN OF PITTSBURY, } ss.:

WHEREAS, a vacancy has occurred in the office of justice of the peace of the town of Pittsboro, by reason of the death (*or, as the case may be*) of George Holmes, heretofore elected to said office from said town, —

Now, therefore, by virtue of the power vested in us by the statute, in such case made and provided, we, the undersigned, the supervisor, town clerk, and the remaining justices of the peace of said town, do hereby, in order to fill such vacancy, nominate and appoint Charles Adams to be justice of the peace of said town, to hold his said office until\* the next succeeding annual town meeting of said town as by law provided.

In witness whereof we have hereto set our hands and seals this 10th day of July, 1869.

(Signatures and Seals.)

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\* If such appointment is to fill the vacancy of an officer whose term of office would have expired on the thirty-first day of December next, insert after the asterisk (\*) "*the thirty-first day of December next,*" instead of the above.

## § 151. To Supply Vacancies in Inspectors of Election.

See *post*, Elections, chap. .

## § 152. Duties as Board of Health.

See *post*, Board of Health, § .

## § 153. Duties as Board of Town Auditors.

See *post*, Auditors, § .

## 6. WITH TOWN CLERK.

### § 154. When to act as Inspector at a Village Election.—The general act for the incorporation of villages

Laws of 1870, chap. 291.

provides for the holding of an election to determine whether a particular territory shall be incorporated as a village,

Id., § 7.

and directs that at such election the supervisor and town clerk of the town, or supervisors or town clerks of the towns, part or parts of which are taken for such village, or any two of such persons, shall constitute the board of inspectors for such election, preside at such election, etc.

Id., § 8.

Within three days after such election the said board of inspectors shall make out a certificate of the holding of the same, showing the result, etc., which shall be signed by the inspectors, or a majority of them, sworn to, and within ten days filed and recorded in the county clerk's office.

Id., § 10.

And if a new election is ordered, the same persons shall act as inspectors, and file a certificate as above.

Id., § 14.

Within twenty days after the territory shall become incorporated as a village, the persons before mentioned as inspectors of the first election, or a majority of them, must publish a notice of such election, and act as inspectors at said election,

Id., § 18.

and make and subscribe a certificate thereof, which is to be recorded in the records of the village.

Id., § 19.

## 7. WITH TOWN CLERK AND ASSESSORS.

### TO MAKE JURY LISTS.

**§ 155. In Towns.**—Except in the counties of Kings and New York, and certain cities, the supervisor, town clerk and assessors of each town *must* meet on the first Monday of July in the year 1878, and in each third year thereafter, at a place within the town appointed by the supervisor, or in case of his absence or of a vacancy in his office, by the town clerk, for the purpose of making a list of persons to serve as trial jurors for the then ensuing three years. If they fail to meet on the day specified in this section, they must meet as soon thereafter as practicable.

Code of Civil Procedure, § 1035.

**§ 156. In Cities.—Making Lists of Jurors in Cities.**—Each ward of the city of Utica is considered a town for

the purpose of making lists of jurors; and the supervisor and assessor of that ward must execute the duties of the supervisor, town clerk and assessors of a town, as prescribed below, except that a duplicate of the list of jurors made by them must be filed in the office of the clerk of the city. In the city of Albany the recorder of said city shall perform the duties imposed in this matter upon the supervisor, town clerk and assessors of towns. In each of the other cities of the State the like duties must be performed by the officers, and in the manner prescribed by law. A city wherein two or more assessors are elected for the entire city is considered a town for the purpose mentioned, except where the officers who are to perform the duties of the supervisor, town clerk or assessor, as prescribed above, are specially designated by law.

Id., § 1041, as amended by chap. 532, Laws of 1881.

**How Made.**—At the meeting specified in section 1035 above given, the officers present must select from the last assessment-roll of the town and make a list of the names of all persons whom they believe to be qualified to serve as trial jurors, as prescribed in the Code of Civil Procedure.

Id., § 1036. In Kings county, see Id., § 1132. In New York, see Id., § 1090.

As to who are qualified, disqualified, and exempt, see next section.

None of the persons entitled to exemption from serving on juries, or who are disqualified by reason of holding certain offices, or who do not possess the requisite qualifications, should be selected and placed on the list.

**§ 157. Who are Disqualified from Serving as Jurors.**—Persons who do not possess the qualifications are disqualified. Besides these, each of the following officers is disqualified to serve as a trial juror :

1. The governor, the lieutenant-governor, the governor's private secretary.

2. The secretary of State, the comptroller, the State treasurer, the attorney-general, the State engineer and surveyor, a canal commissioner, an inspector of State prisons, a canal appraiser, the superintendent of public instruction, the superintendent of the bank department, the superintendent of the insurance department, and the deputy of each officer specified in this subdivision.

3. A member of the legislature during the session of the house of which he is a member.

4. A judge of a court of record or a surrogate.

5. A sheriff, under sheriff or deputy sheriff.
6. The clerk or deputy clerk of a court of record.

Id., § 1029.

**§ 158. Who are Entitled to Exemption from Jury Duty.**—The Code of Civil Procedure provides that each of the following persons, although qualified, is entitled to exemption from service as a trial juror upon his claiming exemption therefrom :

1. A clergyman or a minister of any religion, officiating as such and not following any other calling.

2. A resident officer of, or an attendant, assistant, teacher, or other person actually employed in a State asylum for lunatics, idiots or habitual drunkards.

3. The agent or warden of a State prison, the keeper of a county jail, or a person actually employed in a State prison or county jail.

4. A practicing physician or surgeon having patients requiring his daily professional attention.

5. An attorney and counselor at law regularly engaged in the practice of the law as a means of livelihood.

6. A professor or teacher in a college or academy.

7. A person actually employed in a glass, cotton, linen, woolen or iron manufacturing company, by the year, month or season.

8. A superintendent, engineer or collector on a canal, authorized by the laws of the State, which is actually constructed and navigated.

9. A master, engineer, assistant engineer or fireman actually employed upon a steam vessel making regular trips.

10. A superintendent, conductor or engineer employed by a railroad company other than a street railroad company, or an operator or assistant operator employed by a telegraph company, who is actually doing duty in an office, or along the railroad or telegraph line of the company by which he is employed.

11. A person who has been honorably discharged from the military forces of the State after seven years' faithful service therein. But in order to entitle a person to exemption, under this subdivision, his service must have been performed before the 23d day of April, 1862, either as a general or staff officer, or as an officer, non-commissioned officer, musician or private in a uniformed battalion, company or troop of the militia of the State, and armed, uniformed and equipped according to law, or a portion thereof during that period and in that capacity, and the remainder since the 23d day of April, 1862, as a member of the national guard of the State.

12. A member of a fire company or fire department, duly organ-

ized according to the laws of the State, and performing his duties therein; or a person who, after faithfully serving five successive years in such a fire company or fire department, has been honorably discharged therefrom.

13. A duly licensed engineer of steam boilers actually employed as such.

14. A person otherwise specially exempted by law.

Id., § 1030.

**In addition to those excepted by the Code of Civil Procedure are these others exempted by special statutes.**

15. The superintendent of the Onondaga salt springs, his deputies and all persons engaged in the manufacture of coarse salt.

Laws of 1859, chap. 346, § 128.

16. The keeper of every poor-house, alms-house or other place provided by any city, town or county for the reception and support of the poor.

§ R. S. 1867, § 72.

17. The resident officers of the State lunatic asylums and of the asylum for idiots, and all attendants and assistants actually employed therein, and the certificate of the superintendent or other principal officer of the asylum shall be evidence of the fact of such employment.

Laws of 1842, chap. 135, § 10; id. 1862, chap. 220, § 10; Code of Civ. Proc., § 1031.

18. Every collector of tolls, the clerks of each collector, not exceeding two, having the collector's certificate that they are actually employed by him, and all superintendents of repairs, lock-tenders, inspectors of boats, and weigh-masters, while actually engaged in their respective employments on the canals while the same are navigable.

1 R. S. 702.

19. The members of city and village police forces are usually exempted from jury duty by the statutes organizing such forces.

20. Each of the persons composing the military companies organized for the safety of Sing Sing and Auburn prisons is exempt.

§ R. S. 2619.

21. And the members of the fire company organized at Auburn for the safety of said prison at Auburn.

Id. 2620.

22. And the members of a fire company appointed by the president and directors of any company incorporated for manufacturing

cotton, woolen or linen yarns or cloths, and whose capital exceeds \$25,000, who reside within the limits of land not exceeding twenty-five acres, purchased by said corporation for such manufacturing purposes, are exempt while they hold such appointment.

Chap. 202, Laws of 1815; 2 R. S. 1728.

Every commissioned officer and every enlisted man of the national guard shall be exempt from jury duty during the time he shall perform military service; and every such commissioned officer and enlisted man who shall have served his full term of enlistment and been honorably discharged shall forever after be exempt from jury duty.

§ 145, Military Code, amended by chap. 323, Laws of 1884.

### **§ 159. Who are Qualified to Serve as Jurors.**

—In order to be qualified to serve as a trial juror in a court of record a person must be :

1. A male citizen of the United States and a resident of the county.

2. Not less than twenty-one nor more than sixty years of age.

3. Assessed for personal property belonging to him in his own right to the amount of \$250; or the owner of a freehold estate in real property situated in the county, belonging to him in his own right, of the value of \$150; or the husband of a woman who is the owner of a like freehold estate belonging to her in her own right.

4. In the possession of his natural faculties, and not infirm or decrepit.

5. Free from all legal exceptions, of fair character, of approved integrity, of sound judgment, and well informed.

Code of Civ. Proc., § 1027.

But a person who was assessed on the last assessment-roll of the town for land in his possession, held under a contract for the purchase thereof, upon which improvements owned by him have been made to the value of \$150, is qualified to serve as a trial juror, although he does not possess either of the qualifications specified in subdivision third of the last section, if he is qualified in every other respect.

Id., § 1028.

Great care should be exercised in making this list, for upon the character, integrity, intelligence and sound judgment of those selected depends the rights, property and lives of citizens and the due administration of justice in our courts. The qualifications required by subdivision 5 above, ought, especially, to be

fully, fairly and conscientiously insisted on, by those who select jurors. The law means just what it says; that jurors should be "free from all legal exemptions, of fair character, of *approved integrity*, of *sound judgment* and *well informed*."

**§ 160. Duplicate Lists of Jurors Selected to be Made and Filed.**—Duplicate lists of the names of the persons so selected, showing the place of residence and other proper additions of each of them, as far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within ten days after the meeting one of the lists must be transmitted by those officers to the county clerk, and filed by him. and the other must be filed with the town clerk.

Id., § 1037.

In the city of Utica, one of the lists is filed with the city clerk. In cities generally, the charter prescribes where the list should be filed.

### § 161. Form of List.

COUNTY OF RENSSELAER, }  
TOWN OF PITTSBURY, } ss.:

We, the undersigned, supervisor, town clerk and assessors of the town of Pitts- town, in the county of Rensselaer, do hereby certify that on the first Monday of July, 1881, we assembled at Raymertown, a place within said town, appointed by said supervisor, for the purpose of making a list of persons to serve as trial jurors from said town, for the then ensuing three years, and that the following is a correct list of the persons so selected:

Name.	Occupation.	Residence.
Charles L. Fuller.....	Surveyor.....	Pitts- town.
Nathan Bronson.....	Carpenter.....	do
Edgar M. Krum.....	Machinist.....	do
Israel Wiltze.....	Farmer.....	do
Merriman J. Lester.....	do .....	do

Dated the 6th day of *July*, 1869

A. B.,  
SUPERVISOR,  
S. C.,  
TOWN CLERK,  
R. F.,  
T. W.,  
ASSESSORS.

File one copy with the county clerk and one with the town clerk, within ten days after the meeting.

**§ 162. Jurors to Serve Three Years.**—Each person whose name is contained in a list so transmitted must, unless he

is excused or discharged, serve as a trial juror for three years from the first Monday of August of that year, and thereafter until another list from his town is received and filed.

Code of Civil Procedure, § 1040.

## 8. WITH JUSTICES OF THE PEACE, AND TOWN CLERK.

**§ 163. Duties as Board of Health.**—The supervisor, justices of the peace, town clerk, and one citizen elected by them act as the board of health. The statutes governing their action are as follows:

### CHAP. 270, LAWS OF 1885.

AN ACT for the preservation of the public health, and the registration of vital statistics.

PASSED May 12, 1885; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

*Board of health to be appointed in all cities except; also in villages. — Terms of office, duties, etc.*

SECTION 1. It shall be the duty of the common council, upon the nomination of the mayor of every city in this State, except in the cities of New York, Buffalo, Albany and Yonkers and Brooklyn, which are hereby excepted from the operation of this act, to appoint a board of health for such city, to consist of six persons who are not members of said council (one of whom, at least, shall be a competent physician), who shall be nominated and appointed as follows: two persons for a term of one year; two persons for a term of two years; and two persons for a term of three years. The mayor of such city shall be a member *ex-officio* of such board of health, and shall be president thereof. The said board of health, when duly organized, shall appoint a competent physician (not a member of such board), who shall be health officer for such city. Upon the expiration of the term of office of any member of the board of health, appointed as herein provided, his successor shall be nominated and appointed in like manner for the term of three years; and the said mayor and common council shall also have power to fill any vacancy caused in such board of health by the death, resignation or removal from the city of any member thereof. And it shall be the duty of the trustees of every incorporated village in this State to appoint once, in each year, a board of health of such village, to consist of not less than three nor more than seven persons (who are not village trustees), who shall hold office for one year, or until their successors shall have been appointed. The said board of health thus constituted shall elect a president, and appoint a competent physician (not a member of such board) to be the health officer of such village. This section shall not be construed to remove any of the existing boards of health in any of the cities or villages of this State, but the successors of such boards shall be appointed as in this section provided.

*Board of health in towns. — Vacancy. — Appointment to be filed.*

§ 2. It shall be the duty of the supervisor, the justices of the peace, and the town clerk in each town in this State to meet in their respective towns within thirty days from the date of the town election in each year and elect a citizen of such town of full age, who with them shall constitute the board of health for such town for one year, or until their successors are chosen. The said board of health shall appoint some competent physician, not a member of said board, to be the health



officer for such town. If in any case a vacancy shall occur in the board of health of any city, village or town, by the death, resignation, inability to act or removal from said city, village or town of any member thereof, and if the proper authorities, by inability, neglect or refusal, fail to fill such vacancy, it shall be the duty of the county judge of the county in which such city, village or town is situated, upon being satisfied that such vacancy should be filled without delay, to appoint in writing a competent person to fill such vacancy for the unexpired term. The written appointment to a board of health made by a county judge under this section shall forthwith be filed in the office of the clerk of the county in which said board of health is located. Notice of the membership and organization of all boards of health in this State and of all changes that may from time to time occur therein shall be given forthwith to the State board of health.

*Powers, etc.*

§ 3. The several boards of health now organized in any city, village or town in this State (except in the cities of New York, Brooklyn and Buffalo), and the several boards of health constituted under this shall have power and it shall be their duty :

*Meetings.*

1. To meet at stated intervals in their respective cities, villages and towns; also whenever the State board of health, or the president and secretary thereof, shall, by notice to the presiding officer of any city, village or town board of health, request him to convene such board to take certain definite proceedings upon matters concerning which the said State board of health, or its president and secretary, shall be satisfied that the action recommended by them is necessary for the public good and is within the jurisdiction of such board of health. Any willful violation of any lawful instruction of said State board of health shall be a misdemeanor.

*Prescribe duties of health officer, etc.*

2. To prescribe the powers and duties of the local health officer, who shall act as executive officer of the board; to direct him from time to time in the performance of his duties, and to fix the compensation he shall receive.

*To guard against contagious and infectious diseases, etc.*

3. To guard against the introduction of contagious and infectious disease, by the exercise of proper and vigilant medical inspection and control of all persons and things arriving in such city, village or town from infected places, or which, for any cause, are liable to communicate contagion; to require the isolation of all persons and things infected with or exposed to contagious or infectious diseases, and to provide suitable places for the reception of the same; and if necessary, to furnish medical treatment and care for sick persons who cannot otherwise be provided for; to prohibit and prevent all intercourse and communication with or use of infected premises, places and things; and to require, and if necessary, to provide the means for the thorough purification and cleansing of the same before general intercourse therewith, or use thereof, shall be allowed. And it shall be the duty of every such board of health to report to the State board of health promptly facts which relate to infectious and epidemic diseases, and every case of small-pox or varioloid occurring within its jurisdiction; and to provide at stated intervals a suitable supply of vaccine virus of a quality or from a source approved by the State board of health; and during the existence of an actual epidemic of small-pox, said local board of health shall obtain fresh supplies of said virus at intervals not exceeding one week, and shall at all times provide thorough and safe vaccination for all persons within its jurisdiction who may need the same

*Complaint as to nuisances.*

4. To receive and examine into the nature of complaints made by any of the inhabitants concerning nuisances, or causes of danger or injury to life and health within the limits of its jurisdiction; to enter upon or within any place or premises

where nuisances or conditions dangerous to life and health are known or believed to exist, and by appointed members or persons to inspect and examine the same; and all owners, agents and occupants shall permit such sanitary examinations; and said board of health shall furnish said owners, agents and occupants a written statement of results or conclusions of such examinations; and every such board of health shall have power, and it shall be its duty, to order the suppression and removal of nuisances and conditions detrimental to life and health found to exist within the limits of its jurisdiction.

*Registration of births, marriages and deaths.*

5. To supervise and make complete the registration of all births, marriages and deaths occurring within the limits of its jurisdiction in accordance with the methods and forms prescribed by the State board of health, and to secure the prompt forwarding of the certificates of birth, marriage and death to the State bureau of vital statistics after local registration; and in so completing the said registration the cost thereof shall be a charge upon such city, village or town, and shall not exceed fifty cents for each completely verified and registered record of birth, marriage or death. And to secure the completeness of the said registration it shall be the duty of the parents or custodian of every child, and the groom at every marriage, or the clergyman or magistrate performing the ceremony, to secure the return of the record of such birth or marriage to the board of health or person designated by them within thirty days from the date of such birth or marriage, and each record shall be duly attested by the physician or midwife (if any) in attendance at such birth, or the clergyman or magistrate officiating at such marriage. And it shall be the duty of the health officer of every such board of health to receive and examine and secure the registration of all certificates and records of death and causes of death and findings of coroners' juries, and said board of health shall designate the persons who shall grant burial permits for the burial of the dead, and transit permits for the transportation of the dead bodies of persons which are to be carried for burial beyond the limits of the county where the death occurs; and it shall be the duty of the undertaker, sexton or other person having charge of the body of any dead person to procure a record of the death and its probable cause duly certified by the physician in attendance on the deceased during his last illness, or by the coroner where an inquest is required by law; and there shall be no burial nor removal of the body of any dead person until said duly certified record shall have been presented to the board of health or person designated by them, and until thereupon a permit for burial or transit shall have been obtained. And the said board of health shall prescribe sanitary regulation for such burials and removals of the dead. It shall also be the duty of every such board of health to provide for obtaining copies of the said registered records of births, marriages and deaths, and for the amount and payment of fees for such copies. Such copies, duly attested by the local registering officer, and verified transcripts from the records preserved in the State bureau of vital statistics shall be admitted in all the courts of this State as *prima facie* evidence of the facts therein set forth. If, in any place in this State, the State board of health ascertains that the said registration of births, marriages and deaths is not completely and well made, said State board shall notify the local board of health in such place, that within one month from the date of such notice, said defects and neglect in the records must be amended and prevented. If at the expiration of the time mentioned the said defects and neglect are not overcome and prevented by the said local authorities, it shall be the duty of the said State board of health to take control of said records, and enforce the rules and regulations with reference thereto, and secure their completeness and proper registration within the limit of cost hereinbefore specified, and to continue such control until the said local board of health shall satisfy the said State board of health that they will actually make the said records and registry complete as required by law. Any person neglecting or refusing to make out or file for registration any record as aforesaid, and any person causing, permitting or assisting in the burial or removal of any dead body, unaccompanied by a permit for such burial or removal, duly issued by the local board of health having jurisdiction where the death occurred, and any officer or board that shall neglect or refuse to register and preserve the said records and forward the certificates to the State bureau of vital statistics as above required, shall be deemed guilty of a misdemeanor and may be prosecuted in any court of competent jurisdiction.

*Publication of regulations, etc., necessary to successful operation of this act.*

6. To make and from time to time to publish, in such manner as to secure early and full publicity thereto, all such orders and regulations as they shall think necessary and proper for the preservation of life and health and the successful operation of this law; and to make, without publication thereof, such orders and regulations in special or individual cases, not of general application, as they may see fit concerning the suppression and removal of nuisances, and concerning all other matters in their judgment detrimental to public health, and to serve copies thereof upon any occupant or occupants and the owner or owners of any premises whereon any such nuisances or other matters aforesaid shall exist, or to post the same in some conspicuous place on such premises.

*Warrants of arrest.*

7. To issue warrants to any constable or police of their respective cities, villages and towns, to apprehend and remove such persons as cannot otherwise be subject to the orders and regulations by them adopted; and whenever it shall be necessary to do so, to issue their warrant to the sheriff of their respective counties to bring to their aid the power of the county; all which warrants shall be forthwith executed by the officers to whom they shall be directed, who shall possess the like powers and be subject to the like duties in the execution thereof, as if the same had been duly issued out of any court of record in this State.

*Employing subordinates.*

8. To employ all such persons as shall be necessary to enable them to carry into effect the orders and regulations they shall have adopted and the powers vested in them by this act, and to fix their compensation.

*Penalties and action for.*

9. To impose penalties for the violation of, or non-compliance with their orders and regulations, and to maintain actions in any court of competent jurisdiction to collect such penalties, not exceeding one hundred dollars in any one case, or to restrain by injunction such violations, or otherwise to enforce such orders and regulations.

*Willful refusal to obey order, misdemeanor, fine and imprisonment.— Enter on premises and suppress or remove matter detrimental to public health.— Expense a charge on property.— Judgment a lien priority.— How lien satisfied.*

§ 4. Every person who shall willfully violate or refuse to obey any order or regulation made and published by the board of health of any city, village or town in this State, or any order made and served, or posted as aforesaid, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to fine or imprisonment, or both, in the discretion of the court, such fine not to exceed one thousand dollars nor such imprisonment six months. And in any case of non-compliance with any order or regulation which shall have been served or posted, as provided in subdivision six of section three of this act, the said board or its servants or employees may lawfully enter upon any premises to which such order or regulation relates, and suppress or remove the nuisance or other matters in the judgment of said board detrimental to the public health mentioned in such order or regulation, and any other nuisance or matter of the description aforesaid found there existing; and the expense thereof shall be a charge upon the occupant or any or all of the occupants of said premises, or upon the person or persons who have caused or maintained the nuisance or other matter of the description aforesaid, and may be sued for and recovered with costs by said board in the name of such board in any court having jurisdiction. Whenever execution upon any judgment so obtained shall have been returned wholly or in part unsatisfied, said judgment, for the amount so unsatisfied, shall be a lien upon said premises, having preference over all other liens or incumbrances whatsoever. But in order to acquire such lien such judgment, if in a court not of record, shall first have been docketed in the same place and manner as by law now required to make judg-

ments in such courts liens upon real estate. And whenever any lien upon any premises shall have become fixed as aforesaid, the said board may cause the said premises to be sold at public auction, for a term of time, for the payment and satisfaction of such lien, and the expenses of such sale, giving notice of such sale for twelve weeks successively, once in each week, in one or more newspapers published in the city, incorporated village or town where the premises are situated, as the case may be; or if no newspaper be published in such village or town, then in the newspaper published nearest said premises, and also serving a copy of such notice of sale personally on the owner or agent of said premises, if known, and a resident of said city, village or town, at least fourteen days previous to such sale, or by depositing the same in the post-office, directed to such owner or agent at his place of residence, if known, or the nearest post-office thereto, at least twenty-eight days previous to such sale. And the said premises shall be sold to the person who shall offer to take the same for the shortest time, paying the amount remaining unpaid upon such judgment, with interest, and the expenses of such notice and sale. A certificate of such sale, signed by the president and countersigned by the secretary of such board, shall thereupon be made and delivered to the purchaser, and may be recorded in like manner and with like effect as deeds of conveyance of lands, and thereupon the purchaser, his heirs or assigns, shall be entitled to the possession of said premises so sold as aforesaid, and if unoccupied may immediately enter, and if occupied may have remedy against any occupant by action or by summary proceedings, as against a tenant holding over after expiration of his term; and in case the costs of such action or proceeding shall not be collected by such purchaser of the defendant therein, the same shall be a lien upon said premises, having the like preference as the lien aforesaid, and the term of the said purchaser shall be extended during a time bearing the same proportion to the original term as the amount of such costs bears to the amount paid by such purchaser on such sale. And such term shall commence when such purchaser shall have acquired possession. At any time after such sale, and within six months after the recording of such certificate as aforesaid, the owner or any lienor or incumbrancer of such premises, or of any part thereof, may redeem by paying to the purchaser the amount paid by him on such sale, and all costs and expenses he may have incurred in any action or proceeding as aforesaid to obtain possession, with ten per cent interest thereon. If such redemption be made by the owner, the right of the purchaser shall be extinguished; and if by such lienor or incumbrancer, the amount paid by him to redeem shall be added to his lien or incumbrance, or if he have more than one, to the oldest, and shall thenceforth partake of the nature thereof and be collectible by any remedy adapted thereto.

*Expenses incurred, how chargeable, collected and paid.*

§ 5. All expenses incurred by the several boards of health in the execution and performance of the duties imposed by this act shall be a charge only on their respective cities, villages and towns, and shall be audited, levied, collected and paid in the same manner as other city, village and town charges are audited, levied, collected and paid.

*Health of persons in poor-houses infected with disease.*

§ 6. Whenever any pestilential or infectious or contagious disease shall exist in any county poor-house in this State, or in the vicinity of any such county poor-house, and the physician of such county poor-house shall certify that such pestilence or disease is likely to endanger the health of the persons supported at such poor-house, the superintendent of such county poor-house shall have power to cause the persons supported at such poor-house, or any of them, to be removed to such other suitable place in the same county as shall be designated by the board of health of the city, town or village within which such poor-house shall be situated, there to be maintained and provided for at the expense of the county, with all necessary medical care and attendance, until they shall be safely returned to the county poor-house from which they were taken, or otherwise discharged.

*Boards in incorporated villages. — Boards may combine.*

§ 7. Any legally organized board of health in an incorporated village, which comprises parts of several towns, or less than a whole town, shall have full

authority in regard to all matters relating to public health within said village, and such village shall not be subject to the sanitary regulations or health officers of the township or towns within which such village is located; nor shall the taxable property of any such village, while maintaining its own board of health, be subject to taxation for maintaining any town board or boards of health, or for any expenditures authorized by such town boards; but such expenditures of the town boards of health shall be assessed and collected exclusively on property in the town outside of said village. But nothing in this act shall be construed to prevent the boards of health of two or more towns adjacent to each other, or of towns and villages therein situated, from uniting in a combined sanitary and registration district by the appointment of one health officer and registering officer for such district, whose authority in all matters of general application shall be derived from the several boards of health having jurisdiction within such district; and in special cases, not of general application, arising within the jurisdiction of any such board of health, the said officers shall derive their authority from such board alone. Such combined district shall be formed subject to the approval of the State board of health.

*Mandamus.*

§ 8. Any duty prescribed or enjoined by this act upon any local board of health, or any member or officer thereof, or upon the common council of any city or any member thereof, or upon the board of trustees of any village or any member thereof, or upon any officer of any city, village or town, may be enforced by a mandamus at the instance of the State board of health, its president, secretary or any member thereof.

*Repealing clause.*

§ 9. Chapter one hundred and fifty-two of the laws of eighteen hundred and forty-seven, chapter three hundred and twenty-four of the laws of eighteen hundred and fifty, and the several acts amendatory thereof, chapter five hundred and twelve of the laws of eighteen hundred and eighty, except subdivision thirty-four of section one of said act, and all other acts or parts of acts, general or special, inconsistent with the provisions of this act are hereby repealed.

CHAP. 329, LAWS OF 1886.

AN ACT to prevent the spread of contagious and infectious diseases.

PASSED May 12, 1886.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

*Body to be inclosed in Sealed Casket.*

SECTION 1. Whenever the body of any deceased person is to be transported over the railroads of this State, or upon any passenger steamboat plying upon the rivers of this State, the board of health to which application is made for a transit permit for the transportation of such body shall, if the physician's certificate or the permit accompanying such body, state the cause of death to have been a contagious or infectious disease, require that such body be inclosed in an hermetically sealed casket of metal or other indestructible material.

§ 2. This act shall take effect immediately.

WITH JUSTICES OF THE PEACE, TOWN CLERK AND  
HIGHWAY COMMISSIONERS.

**§ 164. Formation of Water-works Company.**

—Chapter 737, Laws of 1873, as amended by chapter 213, Laws of 1881; chapters 153 and 422, Laws of 1885; and chapter 415,

Laws of 1876; and chapter 483, Laws of 1883, provide for the formation of water-works companies in towns and villages as follows: Whenever seven or more persons shall organize for the purpose of forming a water-works company in any town or village, they shall, if in an incorporated village, present to the board of trustees thereof, and the supervisor of the town, if in a town, to the supervisor, justices of the peace, town clerk and commissioners of highways thereof, an application setting forth the persons who propose to form such company, the proposed capital stock, and the sources of supply. Such application shall be signed by the proposers, and shall request that said town or village authorities shall consider the application of such company to supply such town or village, or the inhabitants, with pure and wholesome water. Within thirty days of the presentation of such application, said authorities shall determine, by a majority vote, whether such application shall be granted; and said authorities are authorized and empowered to make such determination; and, when the same shall be made, to sign a certificate to that effect, and immediately transmit the same to the applicants, or either of them. Duplicate certificates of such determination shall be filed in the offices of the clerk of the town or village, and the county clerk. (These duplicates, it is apparent, must be signed and filed by the said authorities.) Thereupon the applicants shall meet and organize as provided in said act. Contracts between such companies and towns for the supply of water are authorized, to the amount agreed to be paid therein, to be annually raised as a part of the expenses of the town, provided that in towns where there is an incorporated village constituting a part only of such town, no tax shall be levied, assessed or collected upon property within the village limits therefor, except in pursuance of an agreement with the board of trustees of such village.

#### **§ 165. In Relation to Roads and Bridges.—**

In case any road or roads, bridge or bridges, shall be damaged or destroyed by the elements or otherwise, after any town meeting shall have been held, and since the 15th day of February, A. D. 1865, then and in that case it shall be lawful for the commissioner or commissioners of highways, by and with the consent of the board of town auditors, or a majority thereof, of the town or towns in which such road or roads, bridge or bridges, shall be situated, to cause the same to be immediately repaired or rebuilt, although the expenditure of money required may exceed the sum now authorized to be raised by law upon the taxable property of the town or towns

for such purposes ; and the commissioners of highways shall present the proper vouchers for the expense thereof to the town auditors, at their next annual meeting, and the said bill shall be audited by them, and the amount audited thereon shall be collected in the same manner as amounts voted at town meetings as now required. The commissioners acting under this act shall be entitled to receive, for each day's service actually rendered, \$2.

The board of town auditors may be convened in special session by the supervisor, or, in his absence, the town clerk, upon the written request of any commissioner of highways, and the bills and expenses incurred in the erection or repairs of any such roads or bridges, may then be presented to and audited by such board of town auditors ; and the supervisor and town clerk shall issue a certificate, to be subscribed by them, setting forth the amount so audited and allowed, and in whose favor, and the nature of the work done and material furnished ; and such certificate shall bear interest from its date, and the amount thereof, with interest, shall be levied and collected in the same manner as other town expenses.

Chap. 103, Laws of 1858, as amended by chap. 442, Laws of 1865, §§ 1 and 2; 2 R. S. 1218.

## § 166. Form for Consent.

COUNTY OF ONEIDA, }  
TOWN OF VERNON, } ss.:

At a meeting of the board of town auditors of the town of Vernon, in said county, held August 1, 1886, the following resolution was duly passed :

WHEREAS, the bridge known as the bridge, over the creek, was destroyed by fire, on July 1, 1886, and after the annual town meeting in said town, and there are not sufficient funds in the hands of the commissioner of highways, to rebuild the same, and said bridge is a public necessity, therefore

*Resolved*, that we hereby consent that said commissioner of highways cause said bridge to be immediately rebuilt.

Signed

MORRIS S. MILLER,  
SUPERVISOR.

A. B.,  
TOWN CLERK.

C. D.,  
E. F.,  
G. H.,  
J. K.,  
JUSTICES OF THE PEACE.

TOWN OF VERNON, }  
CLERK'S OFFICE, } ss.:

I hereby certify that I have compared the foregoing transcript of the proceedings of the board of town auditors of said town, duly held on August 1, 1886, with the original thereof on file in this office, and that it is a correct transcript therefrom and of the whole of said original.

Dated August 2, 1886.

A. B.,  
TOWN CLERK.

This copy should be given to the highway commissioner to protect him in his action thereunder; of course the records of the town clerk should show the proceedings in full.

It seems to be the practice in some counties to present a copy of the above to the board of supervisors, with a request to "legalize" the same, as provided by chapter 326, Laws of 1885. As the town board has jurisdiction to act in the matter, their action needs no confirmation by the board of supervisors; the expenses are to be audited by the town board, at their next annual meeting, or at a special meeting, duly convened as required by section 2 of the statute.

The following form will bring the matter before the board of supervisors:

TO THE HONORABLE THE BOARD OF SUPERVISORS OF ONEIDA COUNTY:

In pursuance of the statute in such cases made and provided, I herewith present a duly certified copy of the resolution and proceedings of the board of town auditors of the town of Vernon in relation to roads and bridges, which said copy is hereto annexed and marked Exhibit A (*annex a copy of the form preceding and mark it Exhibit A*).

That in pursuance of said resolution, the commissioner of highways in said town duly erected said bridge, and thereafter presented his vouchers and account therefor to the said board of town auditors, whereupon the said board duly audited the same as more fully appears from the proceedings thereof, a certified copy of which is as follows:

At the annual meeting of the board of town auditors of the town of Vernon, held at , on the day of , 1886:

The account and expenses of , highway commissioner of said town, incurred in pursuance of the consent of this board, given August 1, 1886, by resolution hereto annexed, marked Exhibit A, are hereby audited and allowed at the sum of \$800, payable as follows:

In whose favor.	Nature of work done and material furnished.	Amount claimed.	Amount allowed.
Groton Bridge Company..	Iron bridge.....	\$700 00	\$700 00
A. B.....	Five days' services in erecting the same..	10 00	10 00
C. D.....	2,000 feet plank at \$25.....	50 00	50 00
E. F.....	Five days' services in erecting bridge.....	10 00	10 00
(And so on).			
Total.....	.....	\$800 00	\$800 00

(Signed.)

SUPERVISOR.

TOWN CLERK.

JUSTICES OF THE PEACE.

TOWN OF VERNON, } ss.:

We hereby certify that we have compared the foregoing transcript of the proceedings of the board of town auditors of said town, duly held on the , day of , 1886 with the original thereof on file in the town clerk's office, and that the same is a correct transcript therefrom and of the whole of said original.

Dated , 1886.

A. B.,  
SUPERVISOR.  
C. D.,  
TOWN CLERK.



' In connection therewith I ask the passage of the following resolution :

*Resolved*, That the sum of \$800 be and the same is hereby levied upon the taxable property of the town of Vernon, and orders therefor be drawn payable to the several persons specified in said auditor's certificate for the amounts set opposite their respective names.

All of which is respectfully submitted.

A. B.,  
SUPERVISOR.

Dated , 1886.

The board of supervisors have no discretion as to the amount to be raised. They are to raise the amount audited by the town board.

*People v. Supervisors of Queens*, 1 Hill, 195; *Osterhoudt v. Rigney et al.*, 98 N. Y. 222-230.

**§ 167. Meeting to Determine What Amount Shall be Borrowed.** — On the first Monday of March, in each year, at ten o'clock in the morning, at the town clerk's office, the supervisor, commissioners of highways, town clerk and justices of the peace, shall meet to determine what amount, if any, shall be borrowed on the credit of the town, for building or repairing any road or roads, or bridge or bridges, in such town or partly in such town and partly in an adjoining town, or to pay any existing debt incurred in good faith by, or on behalf of, such town before the passage of this act, and for what roads or bridges such amount shall be borrowed or appropriated and for the same purposes a meeting or meetings of said officers may, and shall also be held, upon the call of the town clerk, whose duty it shall be to call the same within one week after the receipt of a written request of twelve tax-payers of the town therefor, and any such meeting may be adjourned for want of a quorum, or in default of any final determination of any question arising, concerning such appropriation; but no such meeting shall be held subsequent to the first Monday of October, in each year.

Chap. 855, Laws of 1869, § 1, as amended by chap. 250, Laws of 1882.

The amount to be borrowed cannot exceed one-half of one per cent of the assessed valuation of taxable property of the town for such year.

*Id.*

The minutes of the meeting should be properly kept in town books of record and show the whole proceedings to be regular.

The following petition will bring the matter before the board of supervisors and also shows the proper method of keeping the record of the proceedings of the town officers.

#### PETITION — FORM OF.

TO THE HONORABLE THE BOARD OF SUPERVISORS OF ONEIDA COUNTY.

The petition of the undersigned supervisor of the town of Marshall, in said county, respectfully represents:

That at a meeting of the supervisor, town clerk, commissioner of highways and justices of the peace of said town, held at the town clerk's office in said town, on

the first Monday of March, 1886, in pursuance of chapter 855, Laws of 1869, and the acts amendatory thereof, the following proceedings were had, viz.:

At the annual meeting of the supervisor, town clerk, commissioner of highways and justices of the peace of the town of Marshall, held at the town clerk's office, March 1, 1886, all of said town officers being present.

On motion of A. B. Mr. Day was chosen chairman and C. D. clerk.

On motion of Mr. F., the following resolution was adopted:

*Resolved*, That we ask the board of supervisors of Oneida county to authorize the supervisor of the town of Marshall to borrow \$500, for and on the credit of said town, for the purpose of opening the road running from N. to W. as laid out in the fall of 1885, and issue bonds therefor, payable in one year, at six per cent interest, at the First National Bank of Utica, and deeming the same to be necessary, we hereby consent thereto.

On motion of L. M. the meeting adjourned.

(Signed.)

JULIUS A. DAY,  
SUPERVISOR.

C. D.,  
TOWN CLERK.

E. F.,  
COMMISSIONER OF HIGHWAYS.

G. H.,  
L. M.,  
R. S.,  
T. V.,  
JUSTICES OF THE PEACE.

CLERK'S OFFICE, }  
TOWN OF MARSHALL, } ss.:

I hereby certify that I have compared the foregoing transcript of the proceedings of the town officers of said town, with the original on file in this office, and that the same is a correct transcript therefrom and of the whole thereof.

Dated *November 1*, 1886.

C. D.,  
TOWN CLERK.

That the assessed valuation of the taxable property of said town for the year 1886, is \$1,000,000.

Wherefore, your petitioner prays that the supervisor of the said town be authorized, in pursuance of such resolution and consent and the statute aforesaid, to borrow the sum of \$500 for and on the credit of said town, and that your board fix and prescribe the form of obligation to be issued and the time and place of payment as prescribed by law.

Dated *November 6*, 1886.

JULIUS A. DAY,  
SUPERVISOR.

This petition should be presented to the board, and is generally referred to the committee on "Legislation" or "Laws," for the reason that the proper form of a resolution authorizing such loans is quite technical and requires careful preparation.

A form for such resolutions may be found in a subsequent chapter, *post*.

See "Committee on Legislation."

These forms can be adapted for use, in the cases of additional amounts to be raised at town meetings or special town meetings, or upon the application of the town officers as provided in

Chap. 274, Laws of 1832; chap. 314, Laws of 1838; chap. 615, Laws of 1857, and chap. 482, Laws of 1875, as amended by chap. 451, Laws of 1885.

## CHAPTER IV.

### ELECTIONS.

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|--|--|
| <b>Sac.</b> 168. Preparation for general election.         | <b>Sec.</b> 179. Ballots must be on plain paper and uniform. |
| 169. Order dividing town into election districts.          | 180. Caption.  |
| 170. New towns, election districts in.                     | 181. Unlawful to distribute other ballots.                   |
| 171. Alteration of districts.                              | 182. Penalty.  |
| 172. Order altering election districts.                    | 183. Repeal.   |
| 173. To give notice of time and place of holding election. | 184-205. Canvass of votes by inspectors.                     |
| 174. Notice of an election.                                | 206-207. Statements of canvass.                              |
| 175. Inspectors of election to be elected annually.        | 207½. Duties of supervisors.                                 |
| 176. Form of appointment for third inspector in towns.     | 208-223. Board of county canvassers.                         |
| 177. When to appoint inspectors.                           | 224-237. Duties of county clerk.                             |
| 178. Appointment of inspectors to fill vacancies.          | 238-243. Official canvass.                                   |
|  | 244. When to order special election.                         |
|  | 245. Notice for special election.                            |
|  | 246-256. Digest of decisions.                                |

### DUTIES UNDER ELECTION LAW.

**§ 168. Preparation for General Election.—**  
**When may Divide Town into Districts.**—The supervisor, assessors and town clerk of each town shall meet at the town clerk's office in such town on the first Tuesday in September next, at ten o'clock in the forenoon, and form themselves into a board. And in case a majority of said officers, for any cause, do not attend on that day, it shall be the duty of those who do attend, to adjourn to some future day, not exceeding five days, and shall immediately thereupon give notice to those officers who do not attend, of the time of such adjournment; and it shall be the duty of all said officers to attend on such adjourned day, and to proceed in the same manner as though a majority had attended on the day appointed by law; and adjournments from time to time may be had by said officers, as occasion may require; but no such adjournments shall extend beyond the first day of October in said year. They shall, in all cases where any town shall contain more than five hundred electors, divide the same into a convenient number of election districts, so that each district shall be in a compact form within their town, and shall contain not more than five hundred electors, as far as the number can be ascertained. But where any town shall contain less than five hundred electors, the board may, in their discretion, divide the same into districts. They shall make a certificate

of such division, under their hands, in which such districts shall be numbered and described by known boundaries, which shall be immediately filed in the office of the town clerk. The town clerk shall, at least two weeks before the day of election, put up copies of the said certificates in at least four public places in each of said districts, within ten days after such meeting; and he shall deliver a copy thereof to an inspector in each district before the day of election.

1 R. S. 382.

This law was passed in 1842. See next three sections.

### **§ 169. Order Dividing Town into Election Districts.**

COUNTY OF RENSSELAER, }  
TOWN OF PITTSBURY, } ss.:

We, the undersigned, supervisor, town clerk and assessors of the town of Pitts- town, in the county of Rensselaer, having met at the town clerk's office in said town on the first Tuesday in September, 1868, for the purpose of dividing said town into election districts, and a majority of said officers being present, did then and there divide said town into *two election* districts, which districts shall be known as election districts No. 1 and 2. Said district No. 1 shall comprise and consist of all that part of said town lying and being within the following bounda- ries, viz: (*describe each district carefully by known boundaries.*) Said district No. 2 shall comprise, etc.

Dated this 14th day of September, 1868.

(Signatures.)

### **§ 170. New Towns, Election Districts in.—**

When any new town shall be formed, the supervisor, town clerk and assessors therein shall meet at the town clerk's office on or before the first Tuesday in September preceding the first general election to be held in such town, and divide the same into districts as herein prescribed, and the same proceedings, in all respects, shall be had as herein provided in respect to towns now existing.

§ 17, tit. 3, chap. 180, Laws of 1842; 1 R. S. 382.

**§ 171. Alteration of Districts.**—In every succeeding year the same officers shall meet at the town clerk's office on the first Monday of October, at ten o'clock in the forenoon, and form a board. They shall determine whether any alteration in the existing election districts be necessary or expedient, and shall have power to make the same, subject to the same restrictions and limitations con- tained in section 168, *ante*; and shall, in like manner, make a certi- ficate of such alterations, exhibiting the districts as altered, and their numbers, respectively; which certificate shall be filed in the town clerk's office. Such alteration shall not take effect until after the then next general election, except in case of the alteration, erection

Id., as amended, chap. 437, Laws of 1880; and chap. 267, Laws of 1885.

COUNTY OF RENSSELAER, } ss.:  
TOWN OF PITTSBURY,

Dated this 3d day of October, 1868.

**This must be filed in the town clerk's office.**

*Id.*, § 18, as amended by Laws of 1881, chap. 137.

TOWN OF \_\_\_\_\_, COUNTY, } ss.:  
 \_\_\_\_\_, }

We, the undersigned, composing the board of town officers of said town, do hereby give notice that the ensuing general election, at which the following officers are to be elected, viz.: *(insert the list of officers contained in the notice of the secretary of State)* will be held on the \_\_\_\_\_ day of \_\_\_\_\_ next, in \_\_\_\_\_.

election district No. 1, at the house of W. X., in said district; on the same day, in election district No. 2, at the house of H. S., in said district; and in election district No. 3, on the same day, at the house of P. Q., in said district, and that the poll of the election will be opened on the                      day of                      afore-said, at (*insert the time fixed upon by the board, not later than 9 A. M.*), and closed at sunset on that day.

Dated                      , the                      day of September, 18   .

A. B.,  
SUPERVISOR.  
S. C.,  
TOWN CLERK.  
R. F.,  
T. W.,  
M. N.,  
ASSESSORS.

In cities the poll shall be opened at sunrise, and in the several towns at any time between sunrise and nine o'clock in the morning, and shall be open without intermission or adjournment, till the setting of the sun.

Special laws exist for different counties, viz.:

As to Westchester, chap. 286, Laws of 1854; as to Queens county and Huntington, Suffolk county, chap. 274, Laws of 1864; Richmond county, chap. 14, Laws of 1871; New York city, chap. 410, Laws of 1882. This notice is to be put up in at least eight public places in each district.

**§ 175. Inspectors of Election to be Elected Annually.**—At each town meeting to be held in the several towns of this State, and at each annual charter election to be held in the several cities of this State, which are not organized into towns after the first day of January next, the electors of such city or town shall be entitled to vote by ballot, on the same ticket with other town or charter officers, for two electors residing in each election district of such town or city, to be inspectors of election for such city or town; and the two persons in each district receiving the greatest number of votes shall be two of the inspectors of election for such district at all elections to be held therein the ensuing year. The presiding officers of such town meeting, or charter election, shall, immediately after the votes of such town meeting or charter election shall be canvassed, appoint, by writing, subscribed by a majority of said presiding officers, another inspector of election for each election district, to be associated with said two inspectors so elected, and who shall thereupon be one of the inspectors of election of such district. Such inspector shall be selected from the two persons in such election district who shall have the highest number of votes next to the two inspectors so elected. And no ballot for inspectors shall be counted upon which more than two names shall be contained.

Chap. 130, Laws of 1842, title 3, § 21; 1 R. S. 383.

“The first of January next,” referred to above, means January 1, 1843.

## § 176. Form of Appointment for Third Inspector, in Towns.

TOWN OF \_\_\_\_\_, ss.:

" We, the presiding officers of the annual town meeting, held in the town of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, do hereby appoint A. B. in election district No. 1, C. D. in election district No. 2, and E. F. in election district No. 3, in said town, inspectors of election in said districts, respectively, to be associated with the two in each of said districts respectively, who have this day been elected inspectors of elections for the ensuing year; the said A. B., C. D. and E. F., each, being one of the two persons who received at said town meeting the highest number of votes, respectively, for said office of inspector, next to the two inspectors so elected.

" Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_."

(To be signed by a majority of the presiding officers.)

**§ 177. When to Appoint Inspectors.**—In case any such inspectors in any town shall not be chosen or appointed as provided for in the preceding section, or any of them shall be absent, or shall have ceased to be a resident of such district, or unable to attend and hold any election in their district, the supervisor, town clerk and justices of the peace in such town shall meet at such time and place as shall be appointed by the supervisor, or in case of his absence or inability, or a vacancy in his office, by the town clerk, and shall designate and appoint so many electors of such election district as shall be necessary to supply such vacancy, to be inspectors of election for such district, and shall file a certificate of such appointment in the office of the town clerk; and the persons thus appointed shall be inspectors of such election for such district. And all vacancies which may exist or occur in the office of inspector of election in any city shall be filled by the common council of such city.

Id., § 22.

In towns in counties of over three hundred thousand inhabitants (Kings county) the supervisor, justices of the peace and town clerk, upon the application in writing of fifty voters of a town, are to meet as a board and appoint a board of registry for the purpose of registering electors entitled to vote at a general election or town meeting. The registers must be five in number, chosen from the two political parties which cast the greatest number of votes at the preceding general election, not more than three from either party.

Chap. 142, Laws of 1880; 1 R. S. 384, § 22.

Various local acts are in force relating to registering voters. They are omitted here as not being within the scope of this work.

No person shall be appointed inspector, or be qualified to act as such, unless he can read and write the English language.

Chap. 56, Laws of 1880.

## § 178. Appointment of Inspectors to Supply Vacancies.

"A. B. is hereby appointed inspector of elections in and for District No. 1, in the town of \_\_\_\_\_, to supply the vacancy occasioned by the omission to elect or appoint (or occasioned by the death, removal or inability to serve, as the case may be, of C. D.), and E. F. is hereby appointed inspector of election in and for District No. 2, in said town, to supply the vacancy occasioned, etc."

Given under our hands, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

D. E.,  
SUPERVISOR.  
R. O.,  
TOWN CLERK.  
K. L.,  
H. I.,  
P. R.,  
JUSTICES OF THE PEACE.

[The above to be filed in the town clerk's office.]

Prior to the election, the sheriff sends a notice thereof to the supervisor.

1 R. S. 382.

These notices are posted up in the town, in some conspicuous public places. The ballots to be provided for an election must conform to the following law:

### UNIFORM BALLOTS.

Laws of 1880, Chap. 366.

AN ACT to secure uniform ballots and preserve the purity of elections.

**§ 179. Ballots Must be on Plain Paper and Uniform.**—At all elections hereafter held within the limits of this State for the purpose of enabling electors to choose by ballot any officer or officers under the law of this State, or of the United States, or to pass upon any amendment, law or public act, or proposition submitted to the electors to vote by ballot under any law, each and all ballots used at any such election shall be upon plain white printing paper, and without any impression, device, mark or other peculiarity whatsoever upon or about them to distinguish one ballot from another in appearance, except the names of the several candidates, and they shall be printed with plain black ink.

**§ 180. Caption.**—Every ballot shall have a caption (as provided by law), but such caption shall be printed in one straight line in black ink, with plain type of the size now generally known and designated as "Great Primer Roman Condensed capitals," and the



names of all candidates shall be printed in plain type, with letters of a uniform size.

**§ 181. Unlawful to Distribute other Ballots.**

It shall be unlawful for any person to print or distribute, or to cast any ballot printed or partly printed contrary to the provisions of this act, or to mark the ballot of any voter, or to deliver to any voter such marked ballot for the purpose of ascertaining how he shall vote at any election.

**§ 182. Penalty.**—Any person or persons who shall knowingly or willfully violate, or attempt to violate, any of the provisions of this act shall be guilty of a misdemeanor, and be punished by imprisonment in a county jail or penitentiary for not exceeding one year, or by a fine of not exceeding \$250, or by both such fine and imprisonment.

**§ 183. Repeal.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed, provided that nothing in this act contained shall be construed to prohibit any elector from voting any ballot entirely written or from voting any printed ballot, which in outward appearance complies with all the requirements of this act, upon the face of which he has personally made, or caused to be made, erasure, correction or insertion of any name by pencil mark or otherwise.

## OF THE CANVASS AND ESTIMATE OF THE VOTES BY THE BOARD OF INSPECTORS.

**§ 184. Order of Canvassing, Except in New York.**—Immediately after the final closing of the poll, at all general elections hereafter to be held in this State, in the several election districts, except in the city of New York, the ballot-boxes used at such elections shall be opened and the votes therein canvassed in the manner now provided by law, but as nearly as may be in the following order :

**1. Electors.**—The box containing the ballots indorsed “Electors.”

**2. State.**—The box containing the ballots indorsed “State.”

**3. Congress.**—The box containing the ballots indorsed “Congress.”

**4. Senate.**—The box containing the ballots indorsed “Senate.”

**5. Assembly.**—The box containing the ballots indorsed “Assembly.”

**6. Judiciary.**—The box containing the ballots indorsed “Judiciary.”

**Other Ballots.**—If any other ballot-boxes shall have been used at any such elections, in pursuance of law, such other boxes shall be opened and the votes therein canvassed immediately after those hereinbefore specified, in such order as the inspectors of elections at the several polls shall, respectively, determine.

§ 1, chap. 79, Laws of 1856, as modified by chap. 712, Laws of 1871.

**§ 185. Order of Canvassing.**—At each annual or special election at which a representative in congress, senator or member of assembly is hereafter to be elected, the inspectors in the several election districts in this State shall provide and keep a separate box in which all ballots for representative in congress, to be indorsed “Congress,” shall be deposited; also a separate box, in which all ballots for senator, to be indorsed “Senator,” shall be deposited; and also a separate box, in which all ballots for member of assembly, to be indorsed “Assembly,” shall be deposited; and the ballots deposited in said several boxes shall be estimated and canvassed in the order named above, respectively, and immediately following the estimate and canvass of the ballots indorsed “State.”

§ 1, chap. 712, Laws of 1871.

**§ 186. Repeal of Inconsistent Acts.**—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Id., § 2.

**§ 187. Proclamation of Result of Canvass.**—At the completion of the canvass of each box, the chairman of the inspectors of election shall make public oral proclamation of the whole number of votes in such box, and of the whole number given for each person, with the name of the office to which such person was named on the ballots.

§ 3, chap. 513, Laws of 1855, as modified by chap. 79, Laws of 1856; and chap. 712, Laws of 1871.

**§ 188. Violation Thereof shall be Punished.**—This act shall be deemed a portion of the electoral law of the State, and any violation thereof shall be punished in the same manner as provided in the general statutes regulating elections.

Id., § 4.

**§ 189. Repeal.**—The act entitled “An act to regulate the number of boxes to be used at elections,” passed March 23, 1852,

and all acts and parts of acts heretofore passed, so far as the same are inconsistent with the provisions of this act, are hereby repealed.

Id., § 5.

**§ 190. Canvass, When and How Made.**—As soon as the poll of an election shall have been finally closed, the inspectors of the said election, in their several districts, shall proceed to canvass the votes. Such canvass shall be public, and shall not be adjourned or postponed until it shall have been fully completed.

§ 35, tit. 4, chap. 130, Laws of 1842. See § 184, *ante*.

**§ 191. Comparison of Poll-lists.**—The canvass shall commence by a comparison of the poll-lists from the commencement, and a correction of any mistakes that may be found therein.

Id., § 36.

**§ 192. Ballots to be Counted.**—Each box being opened, the ballots contained therein shall be taken out and counted unopened, except so far as to ascertain that each ballot is single. And if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be destroyed, if the whole number of ballots exceed the whole number of votes, and not otherwise.

Id., § 37.

**§ 193. Ballots in Wrong Box.**—No ballot, properly indorsed, found in a box different from that designated by its indorsement, shall be rejected, but shall be counted in the same manner as if found in the box designated by such indorsement, provided that, by the counting of such ballot or ballots, it shall not produce an excess of votes over the number of voters, as designated on the poll-list.

Id., § 38.

**§ 194. Excess to be Destroyed.**—If the ballots shall be found to exceed in number the whole number of votes on the correspondent columns of the poll-lists, they shall be replaced in the box, and one of the inspectors shall, without seeing the same, publicly draw out and destroy so many ballots, unopened, as shall be equal to such excess.

Id., § 39.

**§ 195. Estimate of votes.**—The board shall then proceed to canvass and estimate the votes.

Id., § 40.

**§ 196. Excess to be Drawn and Destroyed.—**

If, after having opened or canvassed the ballots, it should be found that the whole number of them exceeds the whole number of voters entered on the poll-lists, the inspectors shall return all the ballots into the box, and shall thoroughly mingle the same; and one of the inspectors, to be designated by the board, shall publicly draw out of such box, without seeing the ballots contained therein, so many of such ballots as shall be equal to the excess, which shall be forthwith destroyed.

Id., § 41.

**§ 197. Statement of Result to be Made.—**

The canvass shall be completed by ascertaining how many ballots of the same kind corresponding in respect to the names of persons thereon and the offices for which they are designated have been received, and the result being found, the inspector shall securely attach to a statement of such canvass one ballot of each kind found to have been given for the officers to be chosen at such election, any or either of them, except those given for electors of president and vice-president; and they shall state in words at full length, immediately opposite such ballot, and written partly on such ballot and partly on the paper to which it shall be attached, the whole number of all the ballots that were received which correspond with the one so attached, so that one of each kind of the ballots received at such election for the officers then to be chosen, shall be attached to such paper, with a statement of such canvass. They shall also attach to such paper the original ballots rejected by them as being defective, which were given at such election.

Id., § 42.

**§ 198. Canvass and Statement of Votes for President and Vice-President.—**

When electors of president and vice-president shall be chosen at any election the inspectors shall make a separate canvass and statement of the votes given for electors, in the manner prescribed in the last preceding section, by ascertaining how many ballots of the same kind, corresponding in respect to the names thereon, have been received; and the result being found, the inspectors shall securely attach to paper one original ballot of each kind found to have been given for electors, and shall state, in words at full length opposite such ballot, and written partly thereon and partly on the paper to which it shall be attached, the whole number of ballots for electors that were found to have been received, corresponding with the one so attached.

They shall also attach to such paper all original ballots for electors, rejected by them as being defective.

Id., § 43.

**§ 199. Form of Statement.**—The statements to be made by the inspectors shall contain a caption, stating the day on which, and the number of the district, the town or ward, and the county at which the election was held, in relation to which such statement shall be made; it shall also contain a statement showing the whole number of ballots taken for each person, designating the office for which they are given, which statement shall be written in words at length; and at the end thereof a certificate that such statement is correct in all respects; which certificate shall be subscribed by the inspectors.

Id., § 44.

**§ 200.**—Every return or statement of the result of the canvass of any election shall be made upon a single sheet of paper, or if not, each half-sheet shall be signed at the end thereof by the inspectors.

§ 11, chap. 56, Laws of 1880.

**§ 201. Copy to be Filed.**—A true copy of the several statements made by the inspectors shall be made and certified by them, and immediately filed by them in the office of the clerk of the town or city.

§ 45, tit. 4, chap. 130, Laws of 1842.

**§ 202. Poll-lists to be Filed.**—The poll-lists kept at such election shall be filed by the inspectors, or one of them, in the office of the clerk of the town or city in which such election was held, and shall be there preserved.

Id., § 46.

**§ 203. Ballots to be Destroyed.**—The remaining ballots, not so pasted or attached, shall be destroyed, and the board of inspectors shall be dissolved.

Id., § 47.

**§ 204. Original Statements to be Delivered to Supervisors.**—The original statements, duly certified, shall be delivered by the inspectors, or by one of them to be deputed for that purpose, to the supervisor of the town or ward, within twenty-four hours after the same shall have been subscribed. If there be no supervisor, or he shall be disabled from attending the board of county canvassers, such original statement shall be delivered to

one of the assessors of the town or ward in which such election was held.

Id., § 48.

**§ 205. Inspectors' Duty to Make and File Duplicate Return of Canvass.**—The inspectors of election of each election district shall, within twenty-four hours after the completion of the canvass, in addition to the making and filing of the returns and statements thereof, now directed and required by law, cause a duplicate of such return or statement to be filed in the office of the clerk of the county. One of their number may be deputed by them to, and may file the same, and he shall be paid for so doing, except in cities and towns where the county clerk's office is situated, the sum of \$5, and, also, four cents a mile for each mile actually and necessarily traveled by the usual route in going to and returning from the said county clerk's office, to be audited, allowed and paid in the same manner as for other services of said inspectors.

§ 14, chap. 56, Laws of 1880.

## § 206. Forms of Statements of Canvass.

### No. 1. GENERAL ELECTION.

Statement of the result of a general election held in and for the first election district of the town of Lee, in the county of Oneida, on the 5th day of November, in the year of our Lord one thousand eight hundred and eighty, made by the inspectors of elections in and for said district, viz.:

The whole number of votes given for the office of governor was		
five hundred.....	500	
Of which Alonzo B. Cornell received three hundred . . . . .		300
Lucius Robinson received one hundred.....		100
John Kelly received one hundred.....		100
	<hr/> 500	<hr/> 500
	<hr/>	<hr/>

The whole number of votes given for the office of lieutenant-governor was five hundred.....	500	
Of which George G. Hoskins received four hundred.....		400
Clarkson N. Potter received one hundred.....		100
	<hr/> 500	<hr/> 500
	<hr/>	<hr/>

*(The statement to include also, in its proper order, each of the officers to be chosen at the same election, excepting electors of president and vice-president and city officers.)*

We certify that the foregoing statement is correct in all respects.

Dated this 5th day of November, in the year 1880.

A. B.,  
C. D.,  
E. F.,  
INSPECTORS.

Write on *one* side only of each sheet and sign and certify each sheet as above.



We certify that the foregoing statement is correct in all respects.  
Dated *November 5, 1880.*

A. B.,  
C. D.,  
E. F.,

INSPECTORS OF ELECTION.

*(Attach ballots, make statements partly thereon, and make and certify copies as in preceding statement.)*

The following instructions are generally furnished with the blanks for inspectors and the supervisor.

“TO INSPECTORS OF ELECTION:

“In preparing the certificates be *very particular*:

“1st. That the *whole number of votes* stated as given for *each office* should *correspond with the aggregate of those cast for each person* voted therefor — thus, where the ballot contains the name of more than *one person for such office* the *whole number of votes cast equals the number received by each of the several persons upon all the ballots for such office.*

“2d. All the blanks relating to the *number of votes* must be filled with *words* (not figures) *written at length.*

“3d. Attach specimen ballots to *each copy* of the returns upon the *page containing the heading for such purpose.*

*(“A careful observance of the foregoing will remove the necessity of the board of county canvassers returning the certificates to the inspectors for correction, and avoid the delay incident to such correction, the expense for which devolves upon the towns whose officers commit these errors.”)*

“TO THE SUPERVISOR:

“It is exceptional, when some of the election returns in the county are not returned by the board of canvassers to the inspectors for the correction of errors. A careful examination of these in the quiet of *home*, rather than in the confusion inseparable from the session of the board, will greatly avoid this necessity.

“It is, therefore, recommended to each supervisor:

“1st. Upon receiving these returns from the several inspectors of election, to carefully examine the same, and *see if they are correct in all the points above mentioned.*

“2d. If there is more than one election district in the town or ward, *then tabulate the aggregate vote cast in the several districts of the same for each office, and the aggregate for whom cast*, being very certain of entire accuracy in these respects and doing this previous to leaving home to attend the county canvass.

“3d. See that each return has one of each of the various *regular* ballots attached thereto.

“Care in these respects by the supervisor will detect any errors which the returns may contain, and thus offer time for their correction while at home, and will greatly facilitate the completion of the canvass.”

These instructions ought to be carefully carried out. Perfect accuracy and completeness in the returns are required. “If any omissions or clerical errors appear therein to the board of county canvassers, that board is put to the inconvenience and delay of sending one of their number with such returns to the election district from which they were received, to give notice of such omissions and mistakes to the inspectors. Whereupon it is the duty of the inspectors to assemble and make such corrections as the facts of the case require; but they are forbidden to change or alter any decision before made by them and only allowed to cause their canvass to be correctly stated.”



As the messenger chosen by the board of county canvassers is generally the supervisor of the town in fault, he has a personal interest in the matter, to see that his returns are *correct* before he starts from home, otherwise he may be sent back, like a school boy, to do his work over again.

## THE BOARD OF COUNTY CANVASSERS.

§ 208. The supervisors or assessors to whom the original statement of the canvass of votes in the towns or wards to which they respectively belong shall have been delivered, shall form the county board of canvassers.

1 R. S. 390, or chap. 130, Laws of 1842.

This board, although composed of town officers, do not meet as such or to perform duties relating exclusively to town or county matters, but meet as a distinct board for a special service

Hawkins v. Mayor, 64 N. Y. 18.

§ 209. **When and Where to Meet.**—They shall meet at the office of the clerk of the county, on the Tuesday next following the election, before one o'clock in the afternoon of that day, in all the counties of this State, except in the county of Hamilton, which shall meet on the first Friday next following said election, and shall choose one of their number chairman.

1 R. S. 390, § 2 (chap. 331, Laws of 1844).

§ 210. **Duty of Canvassers of Hamilton County.**—It shall be the duty of the board of canvassers in the county of Hamilton to canvass all votes given in said county in the same manner as though the said county was fully organized; and the said board of canvassers shall, after they have thus canvassed, transmit to the county clerk of the county of Fulton a statement and certificate of all the votes for the office of governor, lieutenant-governor, senators, representatives in congress, and electors and members of assembly, or either of them, under their signatures, and to be certified by the county clerk, with his seal of office, and which shall be sent to the county clerk's office in the county of Fulton, on or before the first Tuesday next following such election, by some person to be designated and appointed by the board of canvassers of the county of Hamilton.

Id., § 2, 1 R. S. 402.

§ 211. **Duty of Clerk and Canvassers of Fulton County.**—It shall be the duty of the county clerk and the board of canvassers of the county of Fulton to receive and canvass the

votes thus transmitted to them, in the same manner as though each town in the county of Hamilton had sent its canvassers with the canvass.

Id., § 3.

**§ 212. Secretary.**—The clerk of the county, or in his absence his deputy, shall be secretary of the board.

1 R. S. 390, or chap. 130, Laws of 1842, § 3.

**Oath.**—The chairman shall then administer the constitutional oath to each member of the board, and the same oath shall be administered to him by the secretary.

Id.

The oath is to be in the following form :

I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of canvasser of the votes of the county of \_\_\_\_\_, according to the best of my ability.

Id., § 4.

**§ 213. Quorum.**—The major part of the supervisors or assessors to whom the original statements of the canvass in the several districts of their towns or wards shall have been delivered, shall be a sufficient number to constitute a board.

Id., § 5.

**§ 214. Board to Make an Estimate and Statement of Votes.**—The original statements of the canvass in each district shall then be produced, and from them the board shall proceed to estimate the votes of the county, and shall make such statement thereof as the nature of the election shall require; such statements shall then be delivered to and deposited with the county clerk.

Id., § 6.

**§ 215. Separate Statements Containing the Number of Votes for each Office to be Made.**—They shall make a separate statement containing the whole number of votes given in such county for the office of governor, lieutenant-governor, [chief and associate] judges of the court of appeals, justice of the supreme court, secretary of State, comptroller, treasurer, attorney-general, State engineer and surveyor, senator in each district, and representatives in congress in each district, or any or either

of them; the names of the persons for whom such votes were given, and the number of votes given for each; another of the votes given for all county officers, any or either of them; another of the votes given for member of assembly, in each assembly district; and another of the votes for electors of president and vice-president, and another of the votes given for any proposed amendment to the Constitution.

Id., § 7, as amended by § 14, chap. 240, of the Laws of 1847, and modified by §§ 3, 4, art. 5, and § 2, art. 6, State Constitution.

**§ 216. Number of Votes and Names Written at Length.**—In such statements the whole number of votes given in each town and district, the names of the candidates, and the number of votes given to each shall be written out in words at full length.

Id., § 8.

**§ 217. Statements, how to be Certified.**—Each statement shall be certified as correct, and attested by the signatures of the chairman and secretary of the board; and a copy of each, thus certified and attested, shall be delivered to the county clerk, to be recorded in his office.

Id., § 9.

**§ 218. Board of Canvassers to Determine who are Elected Members of Assembly and County Officers.**—Upon the statement of votes given for members of assembly and county officers, the board shall proceed to determine what person or persons have, by the greatest number of votes, been duly elected to each of the offices mentioned in each statement.

Id., § 10.

**§ 219. Copy to be Published.**—The board shall cause a copy of every such determination, and of the statement upon which it shall be made, to be published in one or more of the newspapers printed in the county.

Id., § 11. See § 7, subd. 3, chap. 482, Laws of 1875, as to selection of newspapers by supervisors to publish official canvass.

**§ 220. Proceeding in case Supervisors or Assessors Cannot Attend at Board.**—If any one of the supervisors or assessors appointed to attend the county canvass shall be unable to attend the meeting of the board on the day appointed for such meeting, he shall, on or before that day, cause to

be delivered at the office of the county clerk the original statement of the votes of his town or ward.

Id., § 12.

**§ 221. Duty of Those who Attend.**—If, on that day, a majority of the county canvassers shall not attend, or the statements of the votes from every district in the county shall not be produced, the canvassers then present shall adjourn to some convenient hour of the next day.

Id., § 13.

**§ 222. Duty of Those who Attend on an Adjourned Day.**—At that hour they shall again meet, and the canvassers then attending, although less than a majority of the whole, shall organize themselves as a board, and upon the statements or certified copies thereof, then produced, shall proceed to estimate, state and certify the votes of the county in the manner before directed.

Id., § 14.

**§ 223. Statements Concerning Omissions, etc., may be Returned to be Corrected.**—If, upon proceeding to canvass the votes, it shall clearly appear to the canvassers that in any statement produced to them, certain matters are omitted in such statement, which should have been inserted, or that any mistakes which are clerical merely exist, they shall cause the said statement to be sent by one of their number (who they shall depute for that purpose) to the town or ward inspectors, and town or ward canvassers of the town or ward from whom they were received, to have the same corrected; and the said canvasser so deputed shall immediately proceed and give notice to the said town or ward inspectors and canvassers, whose duty it shall be forthwith to assemble together and make such correction as the facts of the case require; but such town or ward inspectors and canvassers shall not, at such meeting, change or alter any decision before made by them, but shall only cause their canvass to be correctly stated; and the board of county canvassers are authorized to adjourn from day to day for the purpose of obtaining and receiving such statement, said adjournment not to extend beyond three days.

Id., § 15.

## OF THE DUTIES AND PROCEEDINGS OF THE COUNTY CLERK.

**§ 224. County Clerk to Deliver Statements to Board.**—The county clerk shall deliver to the board of county canvassers all the certified statements of the votes taken in each

town or ward at the next preceding election that shall have been received at his office.

Id., § 16.

**§ 225. When County Clerk to Procure Returns.**—If, on the day appointed for the meeting of the board of county canvassers, the board shall not have been organized, owing to a deficient return of the votes of the county, the county clerk shall, by a special messenger or otherwise, obtain necessary statements or certified copies thereof, in time to be produced to the board at their next meeting.

Id., § 17.

**§ 226. To Record Statements.**—The county clerk shall record in his office all the statements and certificates that shall have been delivered to him by the county board of canvassers, and shall keep a proper book for that purpose.

Id., § 18.

**§ 227. To Prepare Three Copies.**—Of the statement and certificate of the votes for the office of governor, lieutenant-governor, (chief and associate) judges of the court of appeals, justices of the supreme court, secretary of State, comptroller, treasurer of the State, attorney-general, State engineer and surveyor, senators and representatives in congress, or either of them, he shall prepare three certified copies under his signature and sealed with his seal of office.

Id., § 19, as amended by § 18, chap. 240, Laws of 1847 and modified by State Constitution.

**§ 228. To Transmit the Same to Governor, Secretary and Comptroller.**—Within five days after the adjournment of the board of county canvassers, the county clerk shall deposit in the nearest post-office, directed to the governor, to the secretary of State, and to the comptroller, each, one of the certified copies of the statement and certificates of votes so prepared by him.

Id., § 20.

**§ 229. To Deliver Copy Certificate to County Officers Elect.**—He shall prepare as many certified copies of each certificate of the determination of the board of county canvassers as there are persons declared to be elected in such certificate, and shall, without delay, deliver one of such copies to each person so elected.

Id., § 21.

**§ 230. County Clerk shall Send to Secretary of State List of Members of Assembly and County Officers Elected.**—He shall transmit to the secretary of State, within twenty days after a general election, and within ten days after a special election, a list of the names of the persons elected in the county as members of assembly, and also a list of the names of all persons elected to any county office at such election, with the places of their residence respectively.

Id., § 22.

**§ 231. County Clerk to Send to Secretary of State Certified Copy of Official Canvass.**—It shall be the duty of the clerk of each county in the State to transmit by mail to the secretary of State, on or before the fifteenth day of December in each year, a certified copy of the official canvass of the votes cast in said county, by election districts, at the then next preceding general election.

Chap. 474, Laws of 1873.

## AS TO THE ELECTION OF ELECTORS OF PRESIDENT AND VICE-PRESIDENT.

**§ 232. Election by General Ticket.**—At the general election in November, preceding the time fixed by the law of the United States for the choice of president and vice-president of the United States, there shall be elected, by general ticket, as many electors of president and vice-president as this State shall be entitled to appoint; and each elector in this State shall have a right to vote for the whole number; and the several persons, to the number required to be chosen, having the highest number of votes, shall be declared and deemed duly appointed electors.

§ 3, tit. 6, chap. 130, Laws of 1842, 1 R. S. 395.

**§ 233. Duty of County Clerk.**—The county clerk of each county shall make three certified copies of the statement of votes given for electors in his county, immediately after recording the same, and forthwith transmit, by mail, one of such certified copies to the governor, another to the secretary of State, and deliver the other as hereinafter directed.

Id., § 4.

**§ 234. Delivery of Certified Statements by Clerk or Deputy.**—One of the certified copies of such state-

ment of votes given in each of the several counties of the State shall be delivered by the clerks of such counties, respectively, or by their respective deputy clerks, as herein directed, on or before the second day succeeding that on which the canvass shall have been made, to the secretary of State.

Id., § 5, as amended by § 1, chap. 446, Laws of 1885. [Sections 6, 7, 8, 9, 10, 11, 12, 13 and 18 of art. 2, tit. 6, chap. 130, Laws of 1842, providing for appointment of messengers from Franklin, St. Lawrence, Chautauqua, Cattaraugus, Tompkins and Suffolk to receive and deliver the returns from the various counties *en route* to Albany, was repealed by § 2, chap. 446, Laws of 1885.]

**§ 235. Penalty for Willful Neglect or Corrupt Conduct.**—If any county clerk or deputy county clerk, or other officer, on whom any duty is enjoined in this act, shall be guilty of any willful neglect of such duty or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding \$1,000, or imprisonment not exceeding one year, or both, and if any person shall be found guilty of taking away from any of the said county clerks or deputy county clerks, either by force or in any other manner, any such certificate intrusted to his care, or of willfully doing any act that shall defeat the due delivery thereof, as directed by this act, he shall be punished by imprisonment in the State's prison at hard labor for not less than two nor exceeding four years.

Id., § 19, as amended by § 3, chap. 446, Laws of 1885. See, also, § 649 of the Penal Code.

**§ 236. Pay of County Clerks.**—The said county clerks shall receive for their compensation, respectively, five cents per mile for each mile traveled by the usual route going and returning, to be audited by the comptroller, upon the certificate of the secretary of State.

§ 20, tit. 6, chap. 130, Laws of 1842, as amended by § 3, chap. 446, Laws of 1885.

**§ 237. The County Clerk Keeps the Records of the Meetings.**

The following is taken from the proceedings of the Erie county board, and is a good illustration of the correct practice.

PROCEEDINGS OF THE BOARD OF COUNTY CANVASSERS OF ERIE COUNTY, NOVEMBER, 1885.

STATE OF NEW YORK,  
ERIE COUNTY CLERK'S OFFICE, }  
BUFFALO, November 10, 1885.

The board of county canvassers for Erie county having met at the office of the county clerk of said county of Erie, pursuant to the statute, for the purpose of canvassing the votes given at the last general election in said county, Mr. W. F. Fisher moved that N. B. Gatchell be elected chairman of said board of county canvassers.

Carried.

The secretary then administered the constitutional oath to the chairman, as follows:

STATE OF NEW YORK, }  
COUNTY OF ERIE, } ss.:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of chairman of the board of county canvassers in and for the county of Erie, according to the best of my ability.

N. B. GATCHELL.

Sworn and subscribed before me this tenth }  
day of November, A. D. 1885. }  
J. E. EWELL,  
COUNTY CLERK AND SECRETARY. }

The chairman then administered the constitutional oath to each of the members of the board as follows:

STATE OF NEW YORK, }  
COUNTY OF ERIE, } ss.:

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of member of the board of county canvassers in and for the county of Erie, according to the best of my ability.

Dated at BUFFALO, N. Y., this 10th day of November, 1885.

PHILO D. BEARD,	C. N. BRAYTON
O. C. BROWN,	C. W. CARTER,
H. B. CHRISTY,	GEO. A. DAVIS,
CHARLES DENNY,	WM. F. FISHER,
H. T. FOSTER,	FRANK W. HESS,
CYRUS HURD,	J. H. JOHNSON,
DENNIS CORBETT,	F. KAPPLER.
MARTIN KELLER,	MICHAEL KELLY,
CHARLES KIBLER,	CHARLES KIEFER,
JOSEPH LENHARD,	J. H. LONG,
WM. J. MAGOFFIN,	ALPHONSO J. MEYER,
N. MERZIG,	G. W. NICHOLS,
MICHAEL H. O'BRIAN,	HENRY H. PERSONS,
G. T. PATTERSON,	MARTIN PLEUTHNER,
CHARLES B. RUSSELL,	R. K. SMITHER,
JOB SOUTHWICK, JR.,	FREDERICK STEPHAN,
CHARLES H. SWEET,	W. H. TICKNOR,
HORACE W. WHITE,	DEAN WILSON,
L. G. WILTSE,	JACOB WURST,
	H. H. VOGHT.

Mr. R. K. Smither presented the following resolution, and moved its adoption:

*Resolved*, That Messrs. W. F. Fisher, H. B. Christy, Frederick Stephan, H. T. Foster, Charles H. Sweet, George A. Davis and Charles N. Brayton be and they are hereby appointed a committee to examine and complete the election returns of the various wards and towns of this county, on file in the office of the county clerk of this county, and report thereon at their earliest convenience to this board.

Adopted.

Mr. Smither moved that the board adjourn to meet at the session room of the board of supervisors Wednesday, November 11, 1885, at 12 o'clock, M.

Carried.

J. E. EWELL,  
COUNTY CLERK AND SECRETARY.

(And so on with each day's proceedings.)



In Oneida county, instead of one committee, there are two committees, viz.:

1. One on "forms of election returns."

2. One on "footing election returns."

The committee on "forms" examines the returns from each election district to see if they comply with the requirements of the law, given above, as to the formal parts of the return.

If they are complete and perfect in form, the committee so reports, and the returns then go to the other committee.

If not correct, the committee so reports, and the imperfect one is returned to the inspectors for correction.

The "footing committee" has but one duty, to prepare the tabular sheet of the votes in each town or ward, and see that the same is correctly footed and extended.

§ 238. The following is the tabular sheet :

## OFFICIAL CANVASS OF ONEIDA COUNTY. — GENERAL ELECTION, NOVEMBER 3, 1885.

## STATE AND COUNTY OFFICERS AND MEMBERS OF ASSEMBLY.

WARDS OF THE CITIES OF UTICA AND ROME AND TOWNS OF THE COUNTY.	GOVERNOR.					LIEUTENANT-GOVERNOR.					SECRETARY OF STATE.					COMPTROLLER.					TREASURER.			(And so on with each office.)
	Whole number of votes.	Ira Davenport.	David B. Hill.	H. Clay Bascom.	George O. Jones.	Whole number of votes.	Joseph B. Carr.	Edward F. Jones.	W. Jennings Demorest.	Lyman W. Gage.	Whole number of votes.	Anson S. Wood.	Frederick Cook.	Edward Evans.	George W. Pimm.	Whole number of votes.	James W. Wadsworth.	Alfred C. Chapin.	Frederick M. Sheldon.	Nelson S. Shaler.	Whole number of votes.	Charles F. Ulrich.	Lawrence J. Fitzgerald.	
Utica, 3d ward.....	685	380	231	44	1	666	358	265	43	1	672	338	290	44	1	683	371	268	44	1	673	356	273	
Utica, 4th ward.....	735	438	256	40	1	732	449	244	37	1	740	446	253	40	1	734	444	252	37	1	739	445	253	
Utica, 5th ward.....	329	78	250	1	1	314	96	217	1	1	313	62	250	1	1	331	85	245	87	1	315	68	248	
Utica, 6th ward.....																								
Utica, 7th ward.....																								
Utica, 8th ward.....																								
Utica, 9th ward.....																								
Utica, 10th ward.....																								
Utica, 11th ward.....																								
Utica, 12th ward.....																								
Bridgewater.....																								
New Hartford.....																								
Paris .....	25698	12596	11693	1351	50	25577	12722	11442	1354	46	25571	12354	11909	1352	43	25736	12728	11610	1347	46	25661	12655	11608	

This report is embodied in the following statement, to-wit:

### § 239. Statement.

Statement of the board of county canvassers of the county of Oneida, in relation to the votes given for the offices of governor, lieutenant-governor, secretary of State, comptroller, treasurer, attorney-general, State engineer and surveyor, justice of the supreme court and State senator.

The board of county canvassers of the county of Oneida having met at the office of the clerk of said county, on the 10th day of November, 1885, to canvass and estimate the number of votes given in the several election districts of said county, at the general election held on the 3d day of November in the year aforesaid, do certify as follows, to-wit:

That it appears on such estimate and canvass that the whole number of votes given for the office of governor was twenty-five thousand six hundred and ninety-nine, of which

Ira Davenport received twelve thousand five hundred and ninety-six.

David B. Hill received eleven thousand six hundred and ninety-three.

H. Clay Bascom received thirteen hundred and fifty-one.

George O. Jones received fifty.

Hill received one.

Blank received six.

And so on with each one.

### Certificate.

We certify this statement to be correct, and have caused the same to be attested by the signatures of the chairman and secretary of this board, this 12th day of November, A. D. one thousand eight hundred and eighty-five.

FRANCIS A. WILLARD,

CHAIRMAN,

M. JESSE BRAYTON,

DEPUTY COUNTY CLERK AND SECRETARY.

### § 240. Statement.

Statement of the board of county canvassers of the county of Oneida, in relation to the votes given for the offices of sheriff, county clerk, superintendent of the poor, coroner and justice for sessions.

The board of county canvassers of the county of Oneida having met at the office of the clerk of said county on the 10th day of November, 1885, to canvass and estimate the votes given in the several election districts of said county, at the general election held on the 3d day of November, in the year aforesaid, do certify as follows:

That it appears on such estimate and canvass that the whole number of votes given for the office of sheriff, was twenty-five thousand six hundred and eighty-four, of which

John Batchelor received thirteen thousand two hundred and sixty-four.

Robert A. Jones received eleven thousand one hundred and eighty-one

Joshua E. Davies received twelve hundred and twenty-one.

Blank received fourteen.

Defective received three.

And so on with each one.

(Add certificate as above.)

## § 241. Statement.

Statement of the board of county canvassers of the county of Oneida, in relation to votes given for members of assembly.

The board of county canvassers of the county of Oneida having met at the office of the clerk of said county, on the 10th day of November, 1885, to canvass and estimate the votes given in the several election districts in each of the several assembly districts of the said county, at a general election held on the 3d day of November, 1885, do hereby certify as follows, to-wit:

That it appears on such estimate and canvass that the number of votes given for the office of member of assembly, in the first assembly district of said county was eight thousand five hundred and sixty-nine, of which

Benjamin Hall received two thousand nine hundred and eighty-eight.

Charles K. Grannis received two thousand seven hundred and thirty-four.

Henry A. Steber received two thousand four hundred and seventy.

Herbert S. Stoddard received three hundred and sixty-five.

Blank received seven.

And so on with each one.

*(Add certificate as above.)*

All the above statements, *except the certificate*, are read through by the clerk, whereupon the following resolution, *in writing*, should be moved and adopted.

*Resolved*, That the statement of the result of the general election held in this county on the 3d day of November, 1885, as read by the secretary, be, and the same is, hereby declared the official canvass thereof, and that the chairman and secretary be, and they are, hereby authorized and directed to sign and certify the same for record.

Also the following resolution *in writing* should be moved and adopted.

*Resolved*, That John Batchelor, by the greatest number of votes cast at said election for the office of sheriff was, and hereby is, declared duly elected to said office; that M. Jesse Brayton, by the greatest number of votes cast at said election for the office of county clerk, was, and hereby is, declared duly elected to said office; that *(and so on with each county officer or member of assembly)*.

The chairman and secretary should then sign the "Certificates" to the "Statements" above.

They should also sign and certify as follows:

## § 242.

### CERTIFICATE OF THE ELECTION OF COUNTY OFFICERS.

The board of county canvassers of the county of Oneida, having canvassed and estimated the votes given in the several election districts of the said county, at a general election held on the 3d day of November, 1885, hereby certify, determine and declare

That John Batchelor, by the greatest number of votes, was duly elected sheriff within and for said county.

That M. Jesse Brayton, by the greatest number of votes, was duly elected county clerk within and for said county.

That Theodore S. Comstock, by the greatest number of votes, was duly elected superintendent of the poor within and for said county.

That Richard R. Jones and James E. Secor, by the greatest number of votes, were duly elected justices for sessions within and for said county.

That Willis E. Millington, by the greatest number of votes, was duly elected coroner within and for said county.

We certify this statement to be correct, and have caused the same to be attested by the signatures of the chairman and secretary of this board, this 12th day of November, A. D. one thousand eight hundred and eighty-five.

FRANCIS A. WILLARD,

CHAIRMAN.

M. JESSE BRAYTON,

DEPUTY COUNTY CLERK AND SECRETARY.

## § 243.

### CERTIFICATE OF THE ELECTION OF MEMBERS OF ASSEMBLY.

The board of county canvassers of the county of Oneida, having canvassed and estimated the votes given in the several election districts in each of the assembly districts of the said county, at a general election held on the 3d day of November, 1885, do hereby certify, determine and declare

That Benjamin Hall, by the greatest number of votes, was duly elected member of assembly in and for the first assembly district in said county.

That Robert W. Evans, by the greatest number of votes, was duly elected member of assembly in and for the second assembly district in said county.

That Israel J. White, by the greatest number of votes, was duly elected member of assembly in and for the third assembly district in said county.

We certify this statement to be correct, and have caused the same to be attested by the signatures of the chairman and secretary of this board, this 12th day of November, A. D. one thousand eight hundred and eighty-five.

FRANCIS A. WILLARD,

CHAIRMAN.

M. JESSE BRAYTON,

DEPUTY COUNTY CLERK AND SECRETARY.

A similar certificate for school commissioners, if any elected, should be made. These certificates are to be recorded in the county clerk's office.

A certified copy is to be delivered by the county clerk to each person elected.

These certificates are evidence of the election of the persons therein declared to have been elected.

1 R. S. 366, § 17.

They are conclusive evidence thereof in every form in which the question could arise, *except that of a direct proceeding in the nature of quo warranto* to try the right to office.

*People v. Jones*, 17 Wend. 81; *People v. Vail*, 20 id. 12; *People v. Van Slyck*, 4 Cowen, 297; *People v. Ferguson*, 8 id. 102; *People v. Cook*, 8 N. Y. 67; *People v. Livingston*, 80 id. 66; *People v. William M. Thornton*, 13 N. Y. W. Dig. 280.

and give the officers named therein, the right *prima facie* to take the office, exercise its powers and perform its duties and receive the emoluments thereof, until the certificate has been corrected or shown to be false by a judicial determination.

*People v. Livingston*, 80 N. Y. 66-69.

In such judicial determination, the court may go behind the certificate of the canvassers and even behind the ballot-box for testimony as to the intention of the voters.

See cases cited above.

**§ 244. When to Order Special Election.**—When any county officer, proper to be chosen at any general election, shall not have been chosen by reason of a tie vote, it is the duty of the board of county canvassers to order a special election for the

election of such officers omitted to be chosen. They shall, without delay, direct and cause to be delivered to the sheriff, clerk or county judge of the county in which such election is to be held, a notice specifying the officer to be chosen; the time for which he is to be chosen, and the day on which such election is to be held; which day shall not be less than twenty nor more than forty days from the date of such notice. Such notice is to be signed by the chairman and clerk of the board.

Laws of 1842, chap. 130, titles 2 and 3; 1 R. S. 379.

## § 245. Notice for Special Election.

TO THE SHERIFF OF THE COUNTY OF RENSSELAER:

WHEREAS, At the last general election held in said county of Rensselaer on the day of November, there was a failure to elect a person to fill the office of \_\_\_\_\_, by reason of a tie vote, and the board of county canvassers having duly ordered a special election for the purpose of filling the vacancy in such office, —

Now, therefore, you are hereby notified, that a special election will be held in the county of Rensselaer on the \_\_\_\_\_ day of November next, for the purpose of electing a person to fill the said vacancy in the office of \_\_\_\_\_, and that said officer will be chosen for \_\_\_\_\_ years and till the 1st of January, 18 \_\_\_\_\_

Dated, etc.

A. B.,

CHAIRMAN, BOARD OF COUNTY CANVASSERS.

C. D.,

CLERK, BOARD OF COUNTY CANVASSERS.

## DIGEST OF DECISIONS.

### 1. AS TO INSPECTORS OF ELECTION.

**§ 246. Writing on Printed Ballots.**—The writing of a name upon a printed ballot in connection with the title of an office is a designation for that office of the name so written, although the printed name for which it is intended as a substitute be not erased.

The writing prevails over the printed letters as the highest evidence of the voter's intention.

People v. Saxton, 22 N. Y. 309.

**§ 247. As to Rejection of Vote by Inspectors, for Crime Committed by Voter.**—Where a person offering to vote was challenged as a deserter, and after taking the preliminary oath, refused to answer questions upon that subject, and thereupon his vote was rejected, held that the inspectors acted without authority. Such rejection can only be upon proof by a duly authenticated record of the conviction.

Goetchens v. Matthewson et al., 61 N. Y. 420.

The jurisdiction of inspectors of election, in questioning a person challenged, is limited to inquiries in reference to his place of residence and qualifications as an elector as prescribed by the Constitution.

Id.

A board of election officers have no power to question the right to citizenship of one who has been naturalized as a citizen by a court of competent jurisdiction.

9 Abb. N. C. 465.

**§ 248. Defective Ballots.** All ballots which are so irregular, ambiguous or informal that they cannot be canvassed, are denominated "defective ballots."

*These must be preserved* and attached to the statements of results, though they must not be counted in.

BALLOTS may be *defective* in various ways, for example :

If under the designation "For Governor," two or more names should be written or printed, or if under the designation of any office, more names than there are officers of the kind to be elected, should be placed on the ticket, then the ballot would be defective, or if several designations of office are united, as "For County Clerk and Coroners," the names attached to or in connection with such blended designations cannot be canvassed, and the ballot is defective.

If the Christian or surname, or part of a name, only, is given, the ballot is defective. But well-known and established abbreviations, by which the meaning is as clearly conveyed as though the names had been written at full length, as *Wm.* for *William*, *Jno.* for *John*, *Abm.* for *Abraham*, etc., may be allowed, counted and returned as if written in full.

Where the name is misspelled, as *Jacub* for *Jacob*, *Jonson* for *Johnson*, but so that the *pronunciation* is not varied, the ballot should be counted and returned as if spelled aright.

Where there is a change or the omission or addition of a middle letter, or of Jr., or Junior, to a name, the vote, if regular in other respects, should not be regarded as defective, but must be counted, and return thereof made *separately* from the others.

Where there is *reasonable doubt*, that is, where two conflicting constructions can be fairly given to the ballot, *it is defective*.

A ballot may be *defective* as to *one or more names or designations of office* upon it, and, so far, not counted, while the *remainder* may

be regular and counted. The *whole* ballot should, in such case, be *attached to the statement*.

Election Code, p. 327; *People v. Ferguson*, 8 Cowen, 106; *People v. Stevens*, 5 Hill, 617; *People v. Cook*, 8 N. Y. 80.

Where votes are cast for "Henry F. Yates," for "H. F. Yates" and for "Frey. Yates" they cannot properly count for Henry F. Yates the votes cast for "H. F. Yates" or "Frey. Yates." Each should be returned *separately*.

*People v. Ferguson*, 8 Cowen, 106.

So votes cast for "Benjamin Welch, Jr.," "Benjamin C. Welch" and for "Benjamin Welch" must be returned *separately*, they cannot all be counted for "Benjamin Welch, Jr."

*People v. Cook*, 8 N. Y. 67.

So votes for "Andrew C. Getty" and "Andrew H. Getty" must be returned *separately*, not all counted for Andrew C. Getty or Andrew H. Getty.

*Kortz v. Board of Canvassers of Green Co.*, 12 Abb. N. C. 84.

The original returns should be given to the supervisors.

The inspectors of election should deposit the original election returns, not copies, with the supervisor.

*People v. Wise*, 2 How. Pr (N. S.) 92.

**§ 249. True Statement Must be Made.**—It is the duty of the inspectors to make, in their return, a true statement of the result of the election in their district; and, until they have done so, their duty is not discharged. It is not discharged by making a false or erroneous return.

**Their Duty when Returns are Returned for Correction.**—Where a return is remitted to a board of inspectors of election for correction, it is their duty to hold a consultation free from the interruptions and suggestions of others. Their action should not be influenced by outside pressure from friends of interested candidates. When they deliberate, they should exclude spectators; and, after a quiet conversation and consultation, they should affix their names to a statement showing the result of the poll.

*People, ex rel. Sanderson, v. Payne*, 12 Abb. N. C. 103; S. C., 2 Civ. Proc. R. 452.

**They cannot Alter any Decision Made by Them.**—The corrections to be made are only the corrections of clerical mistakes, not to alter any decision before made by them.

*People v. Cook*, 8 N. Y. 85.



**§ 250. Returns Valid as to Facts Required to be Set Forth.**—The returns are valid only so far as they are confined to the facts which the inspectors are required to set forth; and if they go beyond these, and state other facts, such statements will be treated as mere surplusage.

*Ex parte* Heath and others, 3 Hill, 42.

## 2. AS TO BOARD OF COUNTY CANVASSERS.

**§ 251. Power of Canvassers.**—The duties of the canvassers are mainly ministerial. They are to make their canvass from the certificate of the district inspectors, provided it is regular on its face, and delivered to the proper office within the time allowed by law. They cannot reject such certificate, nor ascertain the intent of the voters by examining witnesses or testimony of any description except that which is in the certificate itself. Thus, when a return of an election district, regular upon its face, signed by three persons as inspectors of election, who in fact had acted as such upon mistaken information, had been rejected by the county canvassers, on the evidence of a certificate of the town clerk that the persons acting were not inspectors, it was held that the canvassers had exceeded their power in receiving such evidence, and that the return of the inspectors should have been admitted.

*People v. Cook*, 8 N. Y. 67; *People v. Jones*, 17 W. 81; *People v. Vail*, 20 id. 12; *People v. Van Slyck*, 4 Cowen, 297; *People v. Ferguson*, 8 id. 102; *People v. Livingston*, 80 N. Y. 66.

They are to count what appear, on their face, to be the original returns, and which are apparently regular.

*People v. Board of Canvassers of Wayne Co.*, 12 Abb. N. C. 77; S. C., 64 How. 334.

See *ante*, "Defective Ballots."

**§ 252. Cannot Correct Errors in Returns.**—Sectio. 15 of the statute above cited, which authorizes the county board to depute one of their number to return the certificates of the district inspectors to those officers, to supply omissions and correct clerical mistakes, if any exist, and to adjourn in the meantime to allow the correction to be made, is all the correcting or revising power which the county board has over the district board. The corrections are to be made by the latter board, and are only to be corrections of clerical mistakes, and not to alter any decision before made by them.

8 N. Y. 85.

See *ante*, "Defective Ballots."

The rejection by a board of county canvassers of an original return of an election district, upon affidavits that the duplicate or copy which had been filed with the clerk had been changed by the inspectors after filing and upon observing the original, as presented by the supervisor, contains a like change, is in excess of their powers and will be corrected by *mandamus*, although the majority of the board did not consider it to be the original.

People v. Board of Canvassers of Wayne Co., 12 Abb. N. C. 77; S. C., 64 How. 884.

**§ 253. Loss of Ballots.**—The accidental loss of ballots in a single election district, even though it prevent a return from that district, will not prevent the board of canvassers from completing their canvass or making their return on the votes cast in districts regularly returned.

Heath's Case, 8 Hill, 42.

**§ 254. When Power Exhausted.**—When the board of canvassers have completed their canvass and made their certificate their power is exhausted, and they cannot afterward reverse their decision and make a different determination.

Hadley v. Mayor of Albany, 83 N. Y. 608.

See next section.

## POWER OF COURT TO CORRECT ERRORS.

**§ 255. Board of County Canvassers may be Compelled by Supreme Court to Correct Errors in Determination.**—Whenever it shall appear by affidavit that errors have occurred in the determination of the board of county canvassers in any county in this State, the supreme court may, by order, require said board to correct such errors, or show cause why such correction should not be made, and in the event of the failure of said board to make such correction, or show cause as aforesaid, the said court may compel said board by writ of *mandamus* to correct such errors; and if such board of county canvassers shall have made its determination and dissolved, such court may compel it to reconvene for the purpose of making such corrections. For the purpose of making such corrections as the court shall order, the meeting of the board of county canvassers shall be deemed a continuation of its regular session, and the statement and certificates shall be made and filed as the court shall direct; and so far as the same shall vary from the original certificates and statements, the statements and certificates made under the order of the court shall stand in lieu thereof, and shall in all places be treated with the same

effect as if such corrected statement had been a part of the original required by law.

§ 1, chap. 460, Laws of 1880; *People v. Board of Canvassers of Wayne Co.*, 12 Abb. N. C. 77.

**§ 256. Practice to be the Same as in Mandamus.**—The practice in such proceedings in *mandamus* shall be the same as in cases of *mandamus* against a board of supervisors, and for the purpose of service of papers and other proceedings, the board of county canvassers, as organized and existing at the time of making the original canvass, shall be deemed a continuing board.

*Id.*, § 2.

## CHAPTER V.

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**§ 257. The Property Liable to Taxation.**—All lands and all personal estate, within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified.

2 R. S. 981, § 1.

**§ 258. Land, Real Estate, What is.**—The term "land," as used in this chapter, shall be construed to include the land itself above and under water; all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, crantage or dockage thereon; all bridges; all telegraph lines, wires, poles and appurtenances; all surface, underground or elevated railroads; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or grounds; all mains, pipes and tanks laid

or placed in, upon, above or under any public or private street or place; all trees and underwood growing upon land; and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the State. The terms "real estate" and "real property," whenever they occur in this chapter shall be construed as having the same meaning as the term "land," thus defined.

2 R. S. 991, thus amended by chap. 293, Laws of 1881.

**§ 259. Plankroads and Turnpike Roads.**—So much of such road and of the toll-houses, gates and other appurtenances thereof constructed by virtue of the "act to provide for the incorporation of companies to construct plankroads, and of companies to construct turnpike roads," as shall be within any town, city or village, shall be liable to taxation in such town, city or village as real estate.

Chap. 210, Laws of 1847, § 48.

See Exemptions hereof.

## **§ 260. State Lands in Forest Preserve.**

### CHAP. 280.

AN ACT to provide for the taxation of forest land in the counties known as the Forest Preserve.

PASSED May 5, 1886; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. All wild or forest lands belonging to or which may hereafter be acquired by the State within the limits of the Forest Preserve as established by chapter two hundred and eighty-three of the laws of eighteen hundred and eighty-five, shall be assessed and taxed at a like valuation and at a like rate as those at which similar lands of individuals within such counties are assessed and taxed, subject, however, to the provisions of this act. On or before August first in every year the assessors of the town within which the lands so belonging to the State are situated shall file in the office of the comptroller and in the office of the forest commission, a copy of the assessment-roll of the town which, in addition to the other matters now required by law to be stated therein, shall state and specify which and how much, if any, of the lands assessed are forest lands, and also, and separately, which and how much, if any, of the lands assessed are lands belonging to the State; such statements and specifications to be verified by the oaths of a majority of the said assessors. The comptroller shall thereupon, and before the first day of September following, and after hearing the assessors and the forest commission, if they or any of them so desire, correct or reduce any assessment of State land which may in his judgment be in unfair proportion to the remaining assessments of lands within the town, and shall in other respects approve the assessment and communicate such approval, and no such assessment of State lands shall be valid for any purpose until the amount of the assessment is so approved by the comptroller, and such approval attached and deposited with the assessment-roll of the town and therewith delivered by the assessors of the town to the supervisor of the town, or other officer

authorized to receive the same from the assessors. No tax for the erection of a school-house or opening a road shall be imposed upon State lands, unless such erection or opening shall have been first approved in writing by the forest commission. Payments of the taxes which may be imposed according to law and the provisions of this act, upon lands so belonging to the State, shall in every year be made by the treasurer of the State upon the certificate of the comptroller as to the lawful and just amount of such taxes, by allowing to the treasurer of the county in which any such lands may be situate a credit of the amount of such taxes due upon such lands, upon the amount payable by such county treasurer in such year to the State for State taxes; providing, however, that no fees shall be allowed by the comptroller to the county treasurers in adjusting their accounts for such portion of the State tax as is so paid.

§ 2. This act shall take effect immediately.

## **§ 261. Assessment of State Lands for Local Improvements.**

SECTION 1. The persons or officials authorized to assess lands for any local improvements or purposes whatsoever are hereby directed and required to serve on the comptroller of this State, at least three weeks prior to the confirmation of the same, a written notification of the assessment by them of any State lands, which notification shall show the purpose for which the assessment is made, the law authorizing the same, and the State lands and the amounts for which they are assessed, and no such assessment shall be legal unless such notification be duly served. No fee, interest, penalty or expense shall be added to or accrue on any such assessment against State lands, nor shall such lands be sold therefor, but such assessments shall, if confirmed and uncontested, be paid and discharged by the State comptroller out of any moneys appropriated therefor.

§ 2. All sales of State lands for unpaid taxes or assessments for any local improvements or purposes, and all sales of such lands by any municipal or village authority, whether the title thereto be derived from a tax sale or otherwise, for any unpaid tax levied thereon while such title vested in the State, are hereby vacated and declared void.

§ 3. This act shall take effect immediately.

Chap. 435, Laws of 1886.

## **§ 262. As to Real Estate of Corporations.—**

The real estate of all incorporated companies liable to taxation shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals.

2 R. S. 990, § 6.

See *post*, "Corporations."

**§ 263. Lands Sold by the State.**—Lands sold by the State, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed.

2 R. S. 982, § 6.

**§ 264. Personal Property.** — The terms "personal estate," and "personal property," whenever they occur in this chapter, shall be construed to include all household furniture, moneys, goods, chattels, debts due from solvent debtors, whether on account, contract, note, bond or mortgage, public stocks, and stocks in

moneyed corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

2 R. S. 982, § 3.

**§ 265. Certain Debts Owning to Non-Residents.**—Certain rents reserved, and certain debts owing to non-residents are personal property. The laws relating to these are set out in full later.

See *post*, “Assessor’s Duties.”

**§ 266. Debts and Obligations Due, or Owning, Residents of this State.**—All debts and obligations for the payment of money due or owing to persons residing within this State, however secured, or wherever such securities shall be held, shall be deemed, for the purposes of taxation, personal estate within the State, and shall be assessed as such to the owner or owners thereof in the town, village or ward in which such owner or owners shall reside at the time such assessment shall be made (but nothing herein contained shall in any manner authorize the assessment of the same property in more than one place in this State in any one year), nor shall any personal property or estate exempt from taxation under the laws of the United States be liable to assessment under the provisions of this act.

“§ 2. When a person shall have acquired a residence in any town, village or ward in this State, and shall have been taxed therein, such residence shall be presumed to continue for the purposes of taxation until he shall have acquired another residence in said State, or shall have removed therefrom.”

Chap. 892, Laws of 1883.

**§ 267. As to the Taxable Personal Property of Corporations.**

See *post*, “Corporations.”

**§ 268. Property Exempt from Taxation.**—The following property shall be exempt from taxation:

2 R. S. 982, § 4.

All property, real or personal, exempted from taxation by the Constitution of this State, or under the Constitution of the United States.

All lands belonging to this State, or the United States.



Subdivision 2 above, is *probably repealed*.

See chap. 191, Laws of 1878; chap. 140, Laws of 1879; *People, ex rel. Canajoharie Nat. Bk., v. Bd. Supervisors*, 67 N. Y. 109.

As to taxing State lands in forest preserve.

See chap. 280, Laws of 1886, in full, *ante*.

In the city of New York, the mint or branch mint, lands upon which the same are built, its buildings, machinery, bullion or money deposited, are exempt,

Chap. 46, Laws of 1852.

and the assay office, with its buildings, machinery, metal, bullion, coin, is exempt.

Chap. 406, Laws of 1858.

Every building erected for the use of a college, incorporated academy, or other seminary of learning, and in actual use for either of such purposes, every building for public worship, every school-house, court-house and jail used for either of such purposes, and the several lots whereon such buildings so used are situated, and the furniture belonging to each of them.

2 R. S. 982, § 4.

In New York city the use must be *exclusively* for such purposes.

Chap. 232, Laws of 1852.

In order to be exempt, the *title* to such lots must be in the church, college, etc.

*People, ex rel. Swigert, v. Anderson*, 7 N. E. Rep. 625.

A private dwelling and lot rented by a public board of education is not exempt.

*People, ex rel. Rorke, v. Assessors*, 32 Hun, 457.

So one rented by a religious society is not exempt.

*Hebrew Free School Assn. v. Mayor*, 99 N. Y. 488. See, also, *Temple Grove Sem. v. Cramer*, 98 id. 121.

Lands set apart as a situation for a church to be built are not exempt, nor do lots used for a cemetery become exempt by the erection on them of a burial chapel.

*Trinity Church v. Mayor of New York*, 10 How. 138.

Nor are buildings used for a private boarding school. The word "school-house" means only the buildings for public schools, and the words "other seminary of learning" are to be understood as referring to incorporations.

*Chegary v. Mayor of New York*, 13 N. Y. 220.

By the term "lot" is meant the whole lot upon which the buildings are situated, without regard to size or value.

*People v. Commissioners, etc.*, 6 Hun, 109; affirmed, 64 N. Y. 656.

Every poor-house, alms-house, house of industry, and every house belonging to a company incorporated for the reformation of offenders, or to improve the moral condition of seamen, and the real and personal property used for such purposes belonging to or connected with the same.

*Id.*

The edifice of a corporation created for the relief of a class of poor and needy persons, and used exclusively to give a temporary home, asylum and relief to the sick and necessitous, the corporation deriving no income from the premises and constantly relieving persons who would otherwise be likely to become a public charge, is an alms-house and exempt.

People, *ex rel.* Swiss Benev. Society, v. Com'rs, 36 Hun, 811.

The real and personal property of every public library.

*Id.*

All stocks owned by the State, or by literary or charitable institutions.

*Id.*

Any moneyed or stock corporation deriving profit or income from its capital or otherwise, shall add to the dividend which shall be declared upon any stock owned by the State, or by any literary or charitable society or institution, a sum equal to the assessment for taxes paid upon an equal amount of the stock of such corporation not exempt from taxation.

Chap. 409, Laws of 1882, § 325.

The provisions of the sixth subdivision above \* \* \* whereby all stock owned by the State or by literary or charitable institutions, in moneyed or stock corporations, are exempted from taxation, are hereby declared to be for the benefit of the State or the institutions owning such stocks and not for the benefit of the said corporations.

*Id.*, § 326.

The personal estate of every incorporated company not made liable to taxation on its capital in the fourth title of this chapter.

See *post*, "Corporations."

2 R. S. 982, § 4, sub. 7.

**§ 269.** The personal property of every minister of the gospel, or priest of any denomination, or every such minister or priest, who is permanently disabled by impaired health from performing the active duties of the ministry, and every such minister or priest who has reached the age of seventy-five years; and the real estate of such minister or priest, or such disabled or aged minister or priest, when occupied by him, provided such real and personal estate do not exceed the value of \$1,500.

If the real and personal estate, or either of them, of any minister or priest, exceed the value of \$1,500, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation.

2 R. S. 982, § 5.

The rule to be deduced from the above is as follows:

Such clergyman as is specified therein, if he owns real *and* personal property *exceeding* \$1,500, is entitled to a reduction *by the asses-*

sors of \$1,500 from the *sum* of the value of his real *and* personal estate, whether he occupies the land or not.

People, *ex rel.* Mann, v. Peterson, 31 Hun, 421.

If the assessors do not allow his exemption in the assessment-roll, his remedy is to apply to them on grievance day and put in his proof therefor, and if they again refuse it, his remedy is by *certiorari* to review the assessment.

The board of supervisors have no jurisdiction to grant his relief, where he neglects to apply to the assessors and the court therefor, as above specified.

The assessors had jurisdiction of the subject and their action thereon was judicial in its nature ;

Weaver v. Dieffendorf, 3 Denio, 117; Williams v. Weaver, 75 N. Y. 34.

and the board of supervisors are obliged, by law, to annex a tax to the name of every person assessed upon the roll, and to issue a warrant for the collection of the tax.

Mygatt v. Washburn, 15 N. Y. 316-321 ; 2 R. S. 996, § 33.

If, however, the sum of the value of the real *and* personal property is \$1,500 or less, the clergyman must, it seems, *occupy* the real estate, in order to entitle him to an exemption for such *real estate*.

See cases, *supra*.

## § 270. All Property Exempted by Law from Execution.

2 R. S. 982, § 4, subd. 9, except "homesteads."

The following personal property, when owned by a householder, is exempt from levy and sale by virtue of an execution by the Code of Civil Procedure :

§ 1390. 1. All spinning wheels, weaving looms, one sewing machine, with its appurtenances, and stoves put up or kept for use in a dwelling-house.

2. The family Bible, family pictures and school books used by or in the family, and other books not exceeding in value \$50, kept and used as a part of the family library.

3. A seat or pew occupied by the judgment debtor, or the family, in a place of public worship.

4. Ten sheep, with their fleeces, and the yarn or cloth manufactured therefrom; one cow; two swine; the necessary food for those animals; all necessary meat, fish, flour and vegetables actually provided for family use; and necessary fuel, oil and candles for the use of the family for sixty days.

5. All wearing apparel, beds, bedsteads and bedding necessary for the judgment debtor and the family; all necessary cooking utensils; one table; six chairs; six knives; six forks; six spoons; six plates; six tea cups; six saucers; one sugar dish; one milk pot; one tea pot; one crane and its appendages; one pair of andirons; one coal-scuttle; one shovel; one pair of tongs; one lamp and one candle-stick.

6. The tools and implements of a mechanic, necessary to the carrying on of his trade, not exceeding in value \$25.

§ 1391. In addition to the exemptions allowed by the last section, necessary household furniture, working tools and team, professional instruments, furniture and library, not exceeding in value \$250, together with the necessary food for the team, for ninety days, are exempt from levy and sale by virtue of an execution, when owned by a person being a householder, or having a family for which he provides, except where the execution is issued upon a judgment, recovered wholly upon one or more demands, either for work performed in the family as a domestic, or for the purchase-money of one or more articles, except as prescribed in this or the last section.

§ 1392. Where the judgment debtor is a woman, she is entitled to the same exemptions from levy and sale by virtue of an execution, subject to the same exceptions as prescribed in the last two sections in the case of a householder.

§ 1393. The pay and bounty of a non-commissioned officer, musician, or private, in the military or naval service of the United States; a land warrant, pension, or other reward, heretofore or hereafter granted by the United States, or by a State, for military or naval services; a sword, horse, medal, emblem, or device of any kind, presented as a testimonial for services rendered in the military or naval service of the United States; and the uniform, arms and equipments, which were used by a person in that service, are also exempt from levy and sale by virtue of an execution, and from seizure for non-payment of taxes, or in any other legal proceeding.

§ 1394. A right of action to recover damages, or damages awarded by a judgment, for taking or injuring personal property exempt by law from levy and sale by virtue of an execution, are exempt for one year after the collection thereof from levy and sale by virtue of an execution, and from seizure in any other legal proceeding.

Code of Civ. Proc., § 1390 *et seq.*

#### REAL PROPERTY EXEMPT FROM EXECUTION.

§ 1395. Land, set apart as a family or private burying-ground, and heretofore designated, as prescribed by law, in order to exempt the same, or hereafter designated for that purpose, as prescribed in the next section, is exempt from sale, by virtue of an execution, upon the following conditions only:

1. A portion of it must have been actually used for that purpose.
2. It must not exceed in extent one-fourth of an acre.
3. It must not contain, at the time of its designation, or at any time afterward, any building or structure, except one or more vaults, or other places of deposit for the dead, or mortuary monuments.

§ 1396. In order to designate land, to be exempted as prescribed in the last section, a notice containing a full description of the land to be exempted, and stating that it has been set apart for a family or private burying-ground, must be subscribed by the owner; acknowledged or proved, and certified, in like manner as a deed to be recorded in the county where the land is situated; and recorded in the office of the county clerk or register of that county, in the proper book for recording deeds, at least three days before the sale of the land, by virtue of the execution.

§ 271. A "*Homestead*" is not exempt from taxation. The enumeration of the property which is exempt from levy and sale by virtue of an execution does not repeal any special provision of law relating to such an exemption which, by its terms, is applicable only to a particular class of persons or corporations, or to a particular locality or otherwise to a special case.

Code of Civil Procedure, § 1389.

#### THE FOLLOWING ARE ALSO EXEMPT:

New York Hospital.

See chap. 466, Laws of 1875.

**§ 272. Agricultural Society Lands.**—All lands now held, or which may hereafter be held, by any agricultural society in this State, and permanently used for show-grounds by any such society, shall be exempt from taxation during the time so used.

Chap. 183, Laws of 1856.

**§ 273. Plankroads and Turnpikes.**—Toll-houses and other fixtures and all property belonging to any plank or turnpike road company, shall be exempt from assessment and taxation for any purpose whatsoever, until the surplus annual receipts of tolls on their respective roads, over necessary repairs, and a suitable reserve fund for repairs and relaying of plank shall exceed seven per cent per annum, on the first cost of such road. In case of any disagreement between the assessors of any town, village or city, and any such company concerning such exemption claimed, said company may appeal to the county judge of the county in which such assessment is proposed to be made, who shall, after due notice to the appealing party of such appeal, examine the books and vouchers of such company and take such further proof as he shall deem proper and shall decide whether such company is liable to taxation under this section, and his decision shall be final.

Chap. 546, Laws of 1855, amending chap. 87, Laws of 1854, § 5.

**§ 274. Soldiers' Monument Associations.**—The property of such associations is exempt from all public taxes, rates and assessments.

Chap. 273, Laws of 1866, § 6.

**§ 275. Firemen in Incorporated Villages.**—Their property to the amount of \$500 is exempt for village taxes, and the real and personal property of such fire companies may be exempted by vote at any general or any special election called for that purpose.

Chap. 250, Laws of 1879, § 11.

**§ 276. Cemeteries.**—No land actually used and occupied for cemetery purposes shall be assessed.

Chap. 310, Laws of 1879.

This act does not apply to the city of Rochester.

Id.

## § 277. Warner's Observatory.

The building known as Warner's Observatory, situate on the south side of East avenue in the city of Rochester, in this State, and the lot upon which said building is located shall hereafter be exempt from assessment or taxation for any purpose whatever, during the time said building shall be used for astronomical, scientific or educational purposes, and the said observatory shall be open to the public at least two evenings in each week under regulations prescribed by the president of the Rochester University.

Chap. 891, Laws of 1886.

**§ 278. Indian Reservations.**—The property of the Seneca nation of Indians on the Allegany and Cattaraugus Reservations is exempt.

Chap. 45, Laws of 1857.

**§ 279. Light-houses.**—Lands ceded to the United States for the purpose of light-houses are exempt.

Chaps. 49 and 432, Laws of 1874.

**§ 280. Owner of Stock.**—The owner or holder of stock in any incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock.

2 R. S. 982, § 7.

See "Corporations."

**§ 281. New York City Bonds.**—Certain bonds and stocks of the city of New York are exempt from taxation by the city and county of New York, but not exempt for *State* purposes.

Chap. 552, Laws of 1880.

**§ 282. Bonds, Mortgages, etc., for Collection.**—When any bond, mortgage, note, contract, account or other demand, belonging to any person, not being a resident of this State shall be sent to this State for collection, or shall be deposited in this State for the same purpose, such property shall be exempt from taxation; and nothing contained in this chapter shall be construed to render any agent of such owner liable to be assessed or taxed for such property; but every such agent shall be entitled to have any such property deducted from his assessment, upon making affidavit before the assessors at the time appointed by them for reviewing their assessments, that such property belongs to a non-resident owner and therein specifying his name and residence.

2 R. S. 1049, § 3; Williams v. Bd. of Supervisors, 78 N. Y. 562.

**§ 283. Deposits in Savings Banks.**—The deposits in any bank for savings which are due to depositors, and the accu-

mulations in any life insurance company organized under the laws of this State, so far as the said accumulations are held for the exclusive benefit of the assured shall not be liable to taxation, other than the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of the State.

Chap. 456, Laws of 1857.

**§ 284. Moneys, Relief, etc., of Life or Casualty Insurance Upon The Co-Operative or Assessment Plan, When Exempt.**

See *post*, "Corporations."

**§ 285. Registered Vessels.**—All vessels registered at any port in this State, and owned by any American citizen or association, or by any corporation incorporated under the Laws of the State of New York, engaged in ocean commerce between any port in the United States and any foreign port, are exempted from all taxation in this State for State and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this State, for State and local purposes, upon their capital stock, franchises and earnings for the period of fifteen years.

Chap. 433, Laws of 1881.

**§ 286. Gas-light Companies.**—Such companies organized under chapter 37, Laws of 1848, may have their *personal* property exempted from taxation for not exceeding three years from their organization by the city, town or village authorities wherein such companies are located.

§ 18, as amended by chap. 95, Laws of 1871.

**§ 287. United States Securities.**—All stocks, bonds, treasury notes, and other obligations of the United States (which include all bonds, certificates of indebtedness, national currency, coupons, United States notes, treasury notes, fractional notes, certificates of deposit, bills, checks or drafts for money drawn by or upon authorized officers of the United States, stamps and other representatives of value of whatever denomination, which have been or may be issued under any act of congress, are exempt.

U. S. R. S., §§ 3701 and 5413.

**§ 288. Town, City, Village and County Bonds.**—All bonds of towns, cities, villages and counties issued under the

provisions of chapter 316, Laws of 1886, and prior acts, chapter 522, Laws of 1881, and its supplements are exempt until the period when they are made payable.

## WHERE PROPERTY TO BE ASSESSED.

§ 289. **Lands of Individuals.**—Every person shall be assessed in the town or ward *where he resides* when the assessment is made, for all lands then owned by him within such town or ward, and occupied by him, or wholly unoccupied.

2 R. S. 989, § 1.

§ 290. **Lands of Corporations.**—The real estate of incorporated companies *liable to taxation* shall be assessed in the town or ward in which the same shall lie in the same manner as the real estate of individuals.

Id. 990, § 6.

See *post*, “Corporations.”

§ 291. For definition of “land,” see *ante*, “Property liable to taxation.” The interest of a lessee of real property is taxable as real estate.

Trustees of Elmira v. Dunn, 22 Barb. 402.

Parties may, by contract, so regulate their respective interests in real estate that one may be the owner of the buildings and the other of the land.

In such case, each interest may be assessed to its owner, and an assessment of the buildings as real estate is proper.

People, *ex rel.* Muller, v. Board of Assessors, 93 N. Y. 308, and cases cited; People, *ex rel.* Van Nest, v. Com'rs, 80 id. 573.

§ 292. **Occupied Lands.** — Lands occupied by a person other than the owner may be assessed to the occupant, as lands of non-residents, or if the owner resides in the county in which such lands are located, to such owner.

1 R. S. 989, § 2, as amended by chap. 152, Laws of 1878.

§ 293. **Divided by Town or County Line.**—When the line between two towns, wards or counties divides a farm, or lot, the same shall be taxed, if occupied, in the town, ward or county, where the occupant resides; if unoccupied, each part shall be assessed in the town, ward, village or county where the same shall lie.

2 R. S. 989, as amended by chap. 315, Laws of 1886.



## § 294. How if Boundary of Town, City, etc., Passes Through Dwelling-House or Building.

SECTION 1. In all cases where the boundary line of a town or city, or the boundary line between two towns in the same or in different counties, passes through any dwelling-house or building, which, together with the land on which it stands and owned in connection therewith, shall be assessed at the same time in both said town or city, or in both said towns in the same or in different counties, and taxes levied thereon, which shall remain unpaid by the owner or occupant in both said town and city, or in both said towns in the same or in different counties at the time of the passage of this act, it shall be lawful for the occupant of such house or building to elect as his place of residence either said town or city, or either of said towns in the same or in different counties, and said house or building, and the adjacent land owned and occupied in connection therewith, shall be assessed and taxed only in the town or city which the occupant elects as his place of residence, and such residence shall remain as fixed by said election.

§ 2. The occupant shall cause to be served upon the assessors, or upon one of them in both said town and city, or in both of said towns in the same or in different counties, at least thirty days prior to the day fixed by law for the date of assessment, a written notice of his said election, together with a copy of this act, or his said election shall be invalid. Said election shall be final and conclusive upon said owner or occupant.

§ 3. In all cases where taxes have been heretofore levied in more than one place, town or city, upon the same real property which was or is intersected by the boundary line of a town or city, or the boundary line between two towns in the same or in different counties, and remain unpaid by the owner or occupant at the time of the passage of this act, payment of said taxes shall be enforced by that place, city or town only which the occupant shall elect as his place of residence pursuant to sections one and two of this act.

§ 4. This act shall take effect immediately.

Chap. 59, Laws of 1886.

§ 295. The occupancy spoken of in the statute refers to the possession of some individual or individuals, who might themselves be taxed in respect to the land. When neither an Indian tribe nor the individual Indians were liable to be taxed, but are in possession of land, such possession does not answer any of the purposes of the "occupancy" referred to in the act. Such lands would, therefore, be properly assessed as "non-resident."

Fellows v. Denniston, 23 N. Y. 420-436.

An assessment to "Joseph Foster or occupant" is void.

Dubois v. Webster, 7 Hun, 371.

§ 296. **Unoccupied Lands.** — Unoccupied lands, not owned by a person residing in the ward or town where the same are situated, shall be denominated "lands of non-residents," and shall be assessed as hereinafter provided.

2 R. S. 989, § 2.

§ 297. When the line between two towns, wards or counties divides a farm.

See *ante*, § 293.

§ 298. **Where Personal Property to be Assessed.**—Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all personal estate in his possession or under his control as agent, trustee, guardian, exécutor or administrator, and in no case shall property so held, under either of those trusts, be assessed against any other person; and in case any person possessed of such personal estate shall reside, during any year in which taxes may be levied, in two or more counties, towns or wards, his residence, for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town or ward in which his principal business shall have been transacted; but the products of any State of the United States consigned to agents in any town or ward of this State, for sale on commission for the benefit of the owner thereof, shall not be assessed to such agents, nor shall such agents of moneyed corporations or capitalists be liable to taxation under this section for any moneys in their possession or under their control, transmitted to them for the purposes of investment or otherwise.

Id. 989, § 5.

§ 299. Personal property belonging to a resident of this State, in the hands of an agent in another county and which is subject to the order and control of the owner, is taxable to him at his place of residence and not to the agent.

Boardman v. Supervisors, 85 N. Y. 359.

It seems that the plan of taxation is to reach all personal property in the State, save as excepted, by assessing the owner at his home if in the State, the beneficial owner in the person of his trustee, and the non-resident through his agent.

Id.

§ 300. The committee of the estate of a lunatic is not an agent or trustee within the meaning of the above statute. It seems that the personal estate of a lunatic should be assessed *to the lunatic*, at *his* place of residence.

People, *ex rel.* Smith, v. Com'rs, 100 N. Y. 215.

§ 301. **Where a Person has two or more Residences.** In such cases, it is sometimes difficult to determine where he should be assessed. The statute of 1883, chapter 392, answers for most cases.

But if a non-resident of the State comes into this State, intend-

ing to become a resident thereof, and buys both a city and a country residence, situated in different tax districts, a difficult question arises as to taxing his personal property. The following decisions may assist in determining the question.

A person was assessed in West Seneca for his personal property, who lived the greater portion of the year in Buffalo, both places being in the same county but in different tax districts. He had a summer residence in West Seneca, which he occupied with his family in the hot summer; the rest of the year he lived in Buffalo, where he personally carried on and superintended a foundry business, going to West Seneca at night, returning to Buffalo mornings, but occasionally sleeping in Buffalo.

On July first, he was living with his family in West Seneca and assessed by the assessors in West Seneca. *Held*, that he was properly assessed.

*Bell v. Pierce*, 51 N. Y. 16. See, also, *Chaine v. Wilson*, 1 Bos. 673; *Douglas v. Mayor*, 2 Duer, 110; *Bartlett v. City of New York*, 5 Sandf. 44; *In re Nichols*, 54 N. Y. 62.

**§ 302. Personal Estate of Corporations.**—All the personal estate of every incorporated company, *liable to taxation* on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company, shall be; or if such company have no principal office or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike or canal company are collected in several towns or wards, the company shall be assessed in the town or ward in which the treasurer, or other officer authorized to pay the last preceding dividend, resides.

2 R. S. 990, § 6.

See *post*, "Corporations."

The provisions above as to *bridge*, turnpike and canal companies relate to the *personal*, not the *real*, estate of such companies.

*Id.*

## DUTIES OF THE ASSESSORS.

**§ 303. Of the Assessors.**—The officers chosen or appointed to take the initial steps in collecting means for the support and expenses of government are the assessors. Before entering upon their duties, they must take the oath of office, and file the same in the town clerk's office.

**§ 304. Assessment Districts.**— The assessors chosen in each town or ward may divide the same by mutual agreement into convenient assessment districts, not exceeding the number of assessors in such town or ward.

2 R. S. 990, § 7.

Although this division into districts may be made for convenience, yet *one* assessor *cannot* make the assessment or valuation; it is the *joint act of all*, or at least of *a majority of the assessors*. All that is done by the assessors in taking down the names and entering descriptions and amounts in their respective districts, previous to the first of July, is merely obtaining the information preliminary to the assessment to be made when *all* the assessors meet in July and examine and correct and alter such memoranda when they make out the assessment-roll.

People, *ex rel.* Mygatt, v. Supervisors, 11 N. Y. 571, 572.

**§ 305. Inquiry to be Made.**— Between the first days of May and July, in each year, they shall proceed to ascertain, by diligent inquiry, the names of all the taxable inhabitants, in their respective towns or wards, and also all the taxable property, real or personal, within the same.

2 R. S. 990 § 8.

**§ 306. The Time When an Assessment is Made.**—This time is the first day of July. The assessment is regarded in law, as made on this day, July first, and all persons whose *names* appear on the assessment-roll must be residents of the town or ward on that day.

Mygatt v. Washburn, 15 N. Y. 316; Clark v. Norton *et al.*, 49 id. 243; Bell v. Pierce, 51 id. 12-16; Overing v. Foote, 65 id. 263; Boyd v. Gray, 34 How. 323-332, and cases cited.

This does not apply to the county of New York.

People, *ex rel.* Twenty-third St. R. R., v. Com'rs, 91 N. Y. 593.

When a person shall have acquired a residence in any town, village or ward \* \* \* and shall have been taxed therein, such residence shall be presumed to continue for the purposes of taxation, until he shall have acquired another residence in this State or shall have removed therefrom.

Chap. 392, Laws of 1883; *In re* Nichols, 54 N. Y. 62.

If a sale, or exchange of property takes place *after* July first, the seller and buyer must each be assessed on the property he owned *on* July first. No change can be made by the assessors in the assess-

ment, by which the buyer, after July first, will stand assessed for the property purchased and the seller for the purchase-money.

Welty Law of Assessments, 13.

See *post*, "Assessment-roll, when to be completed."

## § 307. Assessment-roll.

### RESIDENTS.

The assessors shall prepare an assessment-roll, in which they shall set down in four separate columns, and according to the best information in their power:

1. In the first column, the names of all the taxable inhabitants in the town or ward, as the case may be.

2 R. S. 991, § 9.

In New York county, the *name* is not necessary to the validity of a tax upon land. The only effect of an omission of, or an error as to the name of the owner, is to deprive the city of its right to collect the tax from the owner's personal property, and confines its remedy to the enforcement of the lien on the lands.

Haight v. Mayor of New York, 21 Dig. 450; S. C., 99 N. Y. 280.

In Kings county the rule is the same as in New York.

Chap. 411, Laws of 1885, §§ 2 and 3.

The term "taxable inhabitants," "person" or "persons" includes corporations as well as individuals.

Chap. 536, Laws of 1857; People, *ex rel.* U. & B. R. R., v. Shields, 6 Hun, 556.

2. In the second column, the quantity of land to be taxed to each person.

3. In the third column, the full value of such land, according to the definition of the term "land," as given in the first title of this chapter.

See *ante*, § 258.

4. In the fourth column, the full value of all the taxable personal property owned by such person, after deducting the just debts owing by him.

2 R. S. 991.

As to corporations, see *post*, "Corporations."

Where a part of the debt was a promissory note of \$25,000 on demand, the proceeds whereof were used by the one claiming the deduction, to purchase U. S. bonds, which were pledged as collateral for the note, *held*, that in the absence of proof that the debt was not a just one and enforceable, he was entitled to have it deducted, and this although the transaction was a device to escape assessment and taxation.

People, *ex rel.* Thurman, v. Ryan, 88 N. Y. 142.

**§ 308. Trustee, Guardian, etc.**—Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment; and he shall be assessed for the value of the real estate held by him in such representative character, at the full value thereof, and for the personal property held by him in such representative character, deducting from such personal property the just debts due from him in such representative character.

2 R. S. 991, § 10.

Where taxes have been imposed upon an executor or administrator, before the estate had been settled by the surrogate's decree, it is the duty of such administrator or executor, before making distribution, to ascertain what the liabilities under it were, whether for taxes or otherwise.

McMahon v. Jones, 1 How. (N. S.) 270.

In the case of executors, the debts to be deducted must be those which are admitted to be just claims against the estate, not contested claims.

People, *ex rel.* Osgood, v. Com'rs, 34 Hun, 506; affirmed, 21 Dig. 378.

The "just debts" which may be deducted are legal, valid and incontestible obligations.

*Id.*

The committee of a lunatic is not such a trustee. It seems that such personal property should be assessed to the lunatic, at his place of residence.

People, *ex rel.* Smith, v. Com'rs, 100 N. Y. 215.

It is very common to assess property in these cases as follows: "The estate of John Doe."

Such assessment is *void*.

Trowbridge v. Horan, 78 N. Y. 439.

"The widow and heirs of Henry Jones."

This is questionable and ought not to be adopted, although it is sustained in Wheeler v. Anthony, 10 Wend. 346.

"J. K. and others, legal heirs of J. K., late of the city of New York, deceased, or their heirs or assigns."

Such assessment is *void*.

Cruger v. Dougherty, 1 Lans. 464.

So is one to

"John Smith or Edward Brown."

*Id.* 468.

or to

"Joseph Foster or Occupant."

Dubois v. Webster, 7 Hun, 371.

to

"P. H., Agent," is improper.

People, *ex rel.* Hoffman, v. Bug, 13 Abb. N. C. 169.

§ 309. As to corporations, see *post*, "Corporations."

§ 310. **2. Non-residents.**—The lands of non-residents shall be designated in the same assessment-roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections.

2 R. S. 991, § 11.

If the land to be assessed be a tract which is subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows :

1. They shall designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded ;

2. If they can obtain correct information of the subdivisions they shall put down in their assessment-rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone, and without the names of their owners, beginning at the lowest number and proceeding in numerical order to the highest ;

3. In a second column, and opposite to the number of each lot, they shall set down the quantity of land therein liable to taxation ;

4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity ;

5. If such quantity be a full lot, it shall be designated by the number alone ; if it be a part of a lot, the part must be designated by boundaries, or in some other way by which it may be known.

*Id.*, § 12.

§ 13. If the land so to be assessed be a tract which is not subdivided, or if its subdivisions cannot be ascertained by the assessors, they shall proceed as follows :

1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they cannot obtain correct information of the subdivisions, as the case may be ;

2. They shall set down, in the proper column, the quantity and valuation as above directed ;

3. If the quantity to be assessed be the whole tract, such a description, by its name or boundaries, will be sufficient ; but if a part only is liable to taxation, that part, or the part not liable, must be particularly described ;

4. If any part of such tract be settled and occupied by a resident

of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed; and if they cannot otherwise designate such parts, they shall notify the supervisor of the town, who shall cause a survey and two manuscript maps to be made, for the purpose of ascertaining the situation and quantity of every such occupied part;

5. One of those maps shall be delivered by the supervisor to the county treasurer, to be by him transmitted to the comptroller, and the other shall be delivered in like manner to the assessors;

6. The assessors shall then complete the assessment of the tract, and shall deposit the map in the town clerk's office, for the information of future assessors. And the expense of making such survey and maps shall be immediately repaid to the supervisor, out of the county treasury; and it shall be added by the board of supervisors to the tax on the tract, distinguishing it from the ordinary tax.

2 R. S. 991, § 13.

§ 14. Whenever it shall be deemed necessary by the assessors of any town to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident lands which is divided by the town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

2 R. S. 992, § 14.

Lands of non-residents *must not* be assessed in the *name* of the owner,

N. Y. & H. R. v. Lyon, 16 Barb. 651; Hilton v. Fonda, 86 N. Y. 339-347.

but if they are actually occupied, they must be assessed to the *resident occupant*, not against the owner by name or as non-resident.

Stewart v. Crysler, 22 N. Y. Week. Dig.; 100 N. Y. 378.

If unoccupied and the lot is part of a tract distinguished by a name, the name of the tract shall be given.

Hubbel v. Weldon, Hill & D. Sup. 139.

If not so distinguished, or the name is unknown, then by designating the lands by which the tract is bounded. Subdivision 5, above, does not dispense, where the land to be assessed is a full lot, with the particularity required by the previous parts of the section in the designation of the lands of non-residents: it relates simply to the description of the *quantity* of land assessed, providing that if such quantity be a full lot, the designation of the number of



the lot is sufficient; otherwise, the quantity must be designated by boundaries, or in some other way by which it may be known.

Id.

Where a township which has not been subdivided into lots is non-resident land and is assessed as such, it is the duty of the assessors to assess it by its number as one lot; they have no right to subdivide it into lots and to assess them at different valuations.

Thompson v. Burhans, 61 N. Y. 52.

If the tract is not subdivided into lots, or they cannot ascertain the subdivision, they are to certify accordingly and give the boundaries on the roll.

Dike v. Lewis, 4 Denio, 237; Tallman v. White, 2 N. Y. 66.

If the tract is subdivided and they can obtain correct information concerning them, the assessors must put down in the roll the numbers of the lots so assessed.

Id.

An accurate designation or description is *essential*.

Id.; Pink v. Barberi, 17 N. Y. Week. Dig. 521; *In re Application* N. Y. C. & H. R. R. R., 15 id. 137.

## AS TO RENTS AND DEBTS OWING NON-RESIDENTS.

### AS TO RENTS.

**§ 311. Duty of Assessors.**—It shall be the duty of the assessors of each town and ward, while engaged in ascertaining the taxable property therein, by diligent inquiry, to ascertain the amount of rents reserved in any leases in fee, or for one or more lives, or for a term of years exceeding twenty-one years, and chargeable upon lands within such town or ward, which rent shall be assessed to the person or persons entitled to receive the same as personal estate, which it is hereby declared to be, for the purpose of taxation under this act, at a principal sum, the interest of which at the legal rate per annum shall produce a sum equal to such annual rents; and in case such rents are payable in any other thing except money, the value of such annual rents in money shall be ascertained by the assessors, and the same shall be assessed in manner aforesaid. And in case the name or names of the person or persons entitled to receive such rents cannot be ascertained by the assessors the same shall be assessed against the tenant or tenants in possession.

Laws of 1846, chap. 327, as amended by chap. 809, Laws of 1873; 2 R. S. 997.

**§ 312. Duty of Board of Supervisors.**—The board of supervisors in each county shall assess the taxes to be raised for town, county and State purposes, upon the person or persons entitled to receive such rents within the town or ward where the lands upon which such rents are reserved and situated, in the same manner and to the same extent as any personal estate of the inhabitants of such town. And in case the names of the persons entitled to such rents have not been ascertained by the assessors the board of supervisors shall assess the tax against such tenants in possession, and the warrant shall direct the collection accordingly.

Id.

The assessors shall, in all cases of assessments under chapter 327 of the Laws of 1846, specify in the assessment-rolls each rent so assessed, and the value fixed upon articles, other than money, in which such rents are payable, and whenever assessments are made against any person in any town or ward in which he does not reside, the board of supervisors of the county to which such assessments are returned shall have in all respects as full power and authority, and it shall be their duty to correct such assessments as to the valuation of the rents, and as to the gross amount for which such person shall be assessed, as the assessors have as to a resident of the town; and such board of supervisors may reduce the amount of such assessments in the respective towns or wards of the county, in proportion or otherwise, as the nature of the corrections require to make such assessments just.

Laws of 1858, chap. 357; 2 R. S. 999.

In *People v. Supervisors*, 60 N. Y. 381, it was held that the provisions of the act of 1858 (§ 1, chap. 357), authorizing boards of supervisors to make corrections in assessments against non-residents upon rents reserved, in certain cases, simply confers the same power of correction in the case of a non-resident tax payer, which the assessors have in the case of a resident of the town. It does not authorize a variation from the rule prescribed by the statute for the assessment of such rents,

§ 1, chap. 327, Laws of 1846.

although it be made to appear that the assessors have, in violation of their duty, assessed other descriptions of taxable property at less than their just and full value, thus making the owner of the rents bear more than his just proportion of the taxes.

Such assessment must specify "*each rent assessed.*"

*Cruger v. Dougherty*, 43 N. Y. 107.

## AS TO DEBTS OWING FOR THE PURCHASE OF REAL ESTATE.

**§ 313. Debts Owning for the Purchase of Real Estate Taxable.**—All debts owing by inhabitants of this State to persons not residing within the United States, for the purchase of any real estate, shall be deemed personal property, within the town or county where the debtor resides, and as such shall be liable to taxation in the same manner and to the same extent as the personal estate of citizens of this State.

Laws of 1851, chap. 371, § 1; 2 R. S. 983.

**§ 314. Agents of Non-resident Creditor to Report to County Treasurer.**—If there shall reside in any county of this State an agent of any non-resident creditor having debts owing to him of the description mentioned in the first section of this act, he shall, on or before the twenty-fifth of July, in each year, furnish to the county treasurer of each county, where such debtor resides, the true and accurate amount of debts of the description mentioned in the first section of this act, which were owing on the first day of January preceding, to the principal of such agent, in each town in such county, which shall be verified by the oath of such agent taken before any officer authorized to administer oaths.

Id., § 2.

**§ 315. Penalty for not Making Report.**—Any such agent who shall refuse or neglect, without good and sufficient cause, to furnish such list shall forfeit the sum of \$500 to the use of each county in which such debtor resides, to be sued for by the treasurer of such county in his name of office, and to be recovered upon proof that the principal of such agent had debts owing to him by the inhabitants of such county, of the description mentioned in the first section of this act, and that the existence of such debts was known to such agent.

Id., § 3.

**§ 316. Abstract to be Sent to Assessors.**—The county treasurer, on receiving such statement, shall immediately make out and transmit to the assessors of the several towns of his county, in which any such debtor resides, an abstract or copy of so much of such statement as relates to the town of such assessor, with the name of such creditor.

Id., § 4.

**§ 317. Name and Amount Due to be Entered on Assessment-roll.**—The assessors, on receiving such abstract or statement from the county treasurer, shall, within the time in which they are now required by law to complete their assessment-roll, enter thereon the name of such non-resident debtor, and the aggregate amount due him in such town on the first day of January preceding, in the same manner other personal property is entered on said roll.

Id., § 5.

**§ 318. Unpaid Taxes, How Collected.**—When it shall appear by the return of any collector, made according to law to a county treasurer, that any tax imposed on a debt owing to a person not residing in the United States, remains unpaid, such county treasurer shall, after the expiration of twenty days from the return of such collector, issue his warrant to the sheriff of any county in this State, where any debtor of such non-resident creditor may reside, commanding him to make of the goods and chattels, and real estate of such non-resident, the amount of such tax to be specified in a schedule annexed to the said warrant, together with his fees and the sum of \$1 for the expense of issuing such warrant, and to return the said warrant to the treasurer issuing the same, and to pay over to him the money which shall be collected by virtue thereof, except the said sheriff's fees, by a certain day therein to be specified, within sixty days from the date of such warrant.

Id., § 6.

**§ 319. Warrants Therefor, How Made Out.**—The taxes upon several debts owing to the non-resident shall be included in one warrant, and the taxes upon several debts owing to different non-residents may be included in the same warrant, and where several non-residents are included in the same warrant, the sheriff shall be directed to levy the sums specified in the schedule thereto annexed, upon the personal and real property of the non-residents respectively, opposite to whose names, respectively, such sums shall be written, together with the sum of fifty cents upon each non-resident, for the expense of such warrant.

Id., § 7.

**§ 320. Lien of Warrant.**—Such warrant shall be a lien upon, and shall bind the real and personal estate of the non-residents, against whom the same shall be issued, from the time an actual levy shall be made upon any property by virtue thereof; and

the sheriff, to whom such warrant shall be directed, shall proceed upon the same, in all respects, with the like effect and in the same manner as prescribed by law in respect to executions against property, issued upon judgments rendered in the supreme court, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner.

Id., § 8.

**§ 321. Sheriff, how Proceeded Against for Neglect to Return Warrant.**—In case of the neglect of any sheriff to return such warrant according to the directions therein, or to pay over any money collected by him in pursuance thereof, he shall be proceeded against in the supreme court, by attachment, in the same manner and with the like effect as for similar neglects in reference to an execution issued out of the supreme court in a civil suit, and the proceedings thereon shall be the same in all respects.

Id., § 9.

**§ 322. Proceedings when Warrant Returned Unsatisfied.**—If any such warrant shall be returned unsatisfied, in whole or in part, the county treasurer, or in the city and county of New York, the comptroller therein, under the direction of the board of supervisors, may obtain an order from a judge of the supreme court, or a county judge of the county to which said warrant was issued, requiring such non-resident, or any person having property of such non-resident, or indebted to him, to appear and answer concerning the property of such non-resident, and the same remedies and proceedings may be had in the name of the county treasurer or comptroller before the officer granting such order, and with the like effect as are provided by the statute in case of a judgment debtor after the return of an execution against him, unsatisfied in whole or in part.

Id., § 10.

**§ 323. Expenses of Treasurer and Assessor, how Paid.**—The expenses of county treasurers, and such compensation as their boards of supervisors shall allow them for their services in executing this act, shall be county charges; and the expenses and charges for the services of assessors under this act shall be town charges, and audited and paid as such.

It seems that the assessors are not bound by the statement furnished by the agent of the non-resident creditor, mentioned in section 2 of chapter 371, Laws of 1851 (§ 314 above). It is their right to inquire and ascertain by other agencies the amount which may be due within their district.

37 N. Y. 344; 76 id. 64.

If no statement is furnished, the assessors fix the valuation from the best information and examination they can get.

Id.; People, *ex rel.* Mutual Tel. Co., v. Comr's, 21 Dig. 438; S. C., 99 N. Y. 254.

The amount determined by the assessors to be due is conclusive on that point until set aside by a proceeding instituted for that purpose.

Id.; Albany & W. S. R. R. v. Town of Canaan, 16 Barb. 244; Mayor, etc., v. Davenport, 92 N. Y. 604-613; People, *ex rel.* Stephens, v. Halsey, 37 id. 344.

**§ 324. Valuation of Real and Personal Property.**—The oath which the assessors are required to take is to the effect that all property, real and personal, has been valued and assessed by them at *full value*, and admits of no *fractional* assessments.

Chap. 201, Law of 1885.

The Revised Statutes, which have not been expressly repealed, read as follows :

All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor.

2 R. S. 992, § 17, as amended by chap. 176, Laws of 1851.

The preceding section shall be followed in all assessments made under this chapter, except where the assessors shall be specially required by law to observe a different rule.

Id., § 18.

The oath is inserted in full hereafter.

The rule to be deduced from the above is that all taxable property is to be valued and assessed at its *full* value. In fixing the amount the assessors act upon their own judgment as to the actual value. They are to ascertain the value as any person would, desiring to buy or sell the same. The mental process by which the assessors arrive at their estimate of value is not the subject of judicial inquiry. The law furnishes, except in few instances, no system for ascertaining values; and within the requirement that property must be assessed at its full value and that all assessments must be equal and uniform, leaves the matter of values to the judgment of the assessors.

Mayor v. Davenport, 92 N. Y. 604-613; *In re Lermance*, 71 id. 481-488; Albany and W. S. R. R. v. Town of Canaan, 16 Barb. 244; Welty Law of Assessments, 235; People, *ex rel.* Supervisors, v. Hadley, 1 Abb. N. C. 441-4.

An assessment made on a basis of one-third of the value of property is *illegal* and a tax deed, under such an assessment, is invalid.

Tierney v. Union Lumbering Co., 2 N. W. Rep. 289.

The decision as to valuation is not the act of *one* assessor only, but the act of all, or at least of the majority of the assessors acting *together*.

People, *ex rel.* Mygatt, v. Supervisors, 11 N. Y. 563, and cases cited.

See *ante*, Property "Liable to taxation," Exemptions and Corporations.

## OMITTED PROPERTY, ASSESSMENT AND VALUATION OF.

§ 325. **Omitted Lands to be Taxed.**—When ever it shall appear to the assessors of any town, city or ward in this State that any land or property legally liable to taxation in said town, city or ward has been omitted in the assessment-roll of the *next preceding year*, it shall be the duty of said assessors, upon the application of any three tax payers in said town, city or ward who shall consider themselves aggrieved, to enter said land or property in the assessment-roll of the current year, at the valuation of the year in which said tax was omitted, or, if not then valued, at the valuation of the preceding year, in a separate line from the valuation of the current year.

Laws of 1865, chap. 453, 1; 2 R. S. 1002.

The assessors *must* enter the property at the valuation of the year preceding, if it was valued upon the assessment-roll of that year; if not, of the year preceding that. *They cannot change* the valuation. If the property was not valued in *one* of those years the assessors have no power to enter it upon the assessment-roll.

People, *ex rel.* Oswald, v. Goff, 52 N. Y. 434.

Where certain property (rents accruing from perpetual leases) had, in 1864, been in fact assessed, but to a person not the owner of the rents, and upon petition duly made to the assessors, the same property was put on the roll of 1865 and assessed to the true owner and a tax levied upon it for 1864, *held* valid.

Overing v. Foote, 43 N. Y. 290. See S. C., 65 id. 263.

Corporations omitted are subject to the same rules above.

People, *ex rel.* Brooklyn City R. R., v. Board of Assessors, 92 N. Y. 430.

§ 326. **Assessment-roll, Deposit for Inspection, Notice Thereof.**—The assessors shall complete the

assessment-rolls on or before the first day of August in every year, and shall make out one fair copy thereof, to be left with one of their number. They shall forthwith cause notices thereof to be left with one of their number; they shall forthwith cause notices thereof to be put up at three or more public places in their town or ward.

2 R. S. 992, § 19, as amended by chap. 110, Laws of 1858, and chap. 536, Laws of 1857.

**§ 327. Contents of Notice.**—Such notices shall set forth that the assessors have completed their assessment-roll, and that a copy thereof is left with one of their number at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August; and that on that day the assessors will meet, at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors on such day, to meet at the time and place specified, and hear and examine all complaints in relation to such assessments that may be brought before them; and they are hereby empowered, and it shall be their duty, to adjourn from time to time, as may be necessary, to hear and determine, in accordance with the rule prescribed by section 15 of said title 2, such complaints. But in the several cities of this State, the notices required by this section may conform to the requirements of the respective laws regulating the time, place and manner for revising assessments in said cities in all cases where a different time, place and manner is prescribed by said laws from that mentioned in this act.

Id., § 20, as amended by Laws of 1851, chap. 176, and chap. 536, Laws of 1857.

The term “person or persons” in the above section includes corporations.  
Laws of 1857, chap. 536.

The assessor with whom such assessment-roll is left shall submit the same during the twenty days specified in such notice, to the inspection of all persons who shall apply for that purpose.

2 R. S. 992, § 21.

The use of the words “complete” and “completed,” in the above is misleading. The same words are used in a subsequent section wherein, on “review day,” or the day for reviewing assessments, they are required to lessen the valuations on certain proofs being furnished, and thereafter are required to go before some officer and verify the assessment after they shall have “*completed*” the same, showing that the roll is not *complete* and *ready* for delivery to the



supervisors, until *after* it is verified, and it cannot be *verified* until *after* review day. So that the assessors do not *complete*, or finish their duties, with respect to the roll until they verify it ready for delivery to the supervisors.

Westfall v. Preston, 49 N. Y. 349; People, *ex rel.* Gillies, v. Suffern, 68 id. 321-326.

An affidavit to or verification of the assessment-roll prior to the third Tuesday of August is a *nullity*.

Id.

The giving of the notice above mentioned is essential to the validity of the tax. The full time required by law must be given.

Wheeler v. Mills, 40 Barb. 644.

A substantial compliance with the statute, in the measures preliminary to the taxation of persons and property, in all matters which are of the substance of the procedure and designed for the protection of the tax payer, is a condition precedent to the legality and validity of the tax.

Westfall v. Preston, 49 N. Y. 349.

After the completion of the roll and formal notice thereof given, the assessors have no jurisdiction to change either the persons or property assessed or the adjudged valuations except upon the complaint of the party aggrieved.

People, *ex rel.* Chamberlain, v. Forest, 96 N. Y. 544.

In this case the assessors intended to assess the plaintiff for \$40,000, but entered it on the roll at \$4,000. Before notice of the completion of the roll was given (the notice of August 1st), the mistake was noticed, but not corrected by the assessors, through neglect. After said notice was given and after August 1st, but *before* review day, one of the assessors changed the assessment to \$40,000, which act was ratified by his associates.

*Held*, that the mistake was not a mere *clerical* error but one of pure negligence, which concerned the very substance and extent of the assessment, and that the plaintiff was entitled to have the assessment reduced *by the court*, to \$4,000.

Id.

What the property owner finds in the roll left with one of the assessors as above prescribed, he has a right to rely on, as the determination of the assessors to be the amount for which he is to be assessed and taxed for that year.

Id.; Overing v. Foote, 65 N. Y. 263.

*It seems* that where the roll is completed and notice given prior to August 1st, and a mistake is discovered after such completion and before that day, that the notice may be countermanded, the roll corrected and completed, and a new notice given *on or before* August 1st.

Id.; 65 N. Y. 263.

### § 328. Review Day, Reduction of Valuation.

Whenever any person on his own behalf, or on behalf of those whom

he may represent, shall apply to the assessors of any town or ward to reduce the value of his real and personal estate, as set down in the assessment-roll, it shall be the duty of such assessors to examine such person, under oath, touching the value of his or their said real or personal estate; and after such examination and such other supplementary evidence, under oath, as shall be presented by the party or person aggrieved, they shall fix the value thereof at such sum as they may deem just, under the rule prescribed by section\* of this title; but if such person shall refuse to answer any question as to the value of his real or personal estate, or the amount thereof, or present sufficient supplementary evidence, under oath, to justify a reduction, the said assessors shall not reduce the value of such real or personal estate. *The examination so taken shall be written and shall be subscribed by the person examined,* and shall be filed in the office of the town clerk of the town or city in which such assessment shall be made; and any person who shall willfully swear false on such examination before the assessors shall be deemed guilty of willful and corrupt perjury. It shall also be the duty of the assessors, whenever the valuation fixed to† them, after such examination, shall exceed that sworn to by the aggrieved party or person, to indorse on the written examination the words "Disagreed to by the undersigned assessors, under the rule prescribed for making assessments by section 15, article 2, title 2, chapter 13, part 1 of the Revised Statutes, and in view of the obligations imposed by the deposition and oath, subscribed and made on the completion of the assessment-roll, to which this disagreement refers." It shall be the duty of the assessors, on the same occasion, to furnish the aggrieved party or person a duplicate copy of the before-mentioned written examination, together with the indorsement of disagreement aforesaid, duly signed.

2 R. S. 994, as amended by Laws of 1857, chap. 586, § 5.

The assessors have power to administer the oath to any person applying to them under the provisions of the above section.

Id.; Laws of 1851, chap. 176.

One who fails to subscribe a written examination has no right to have the deduction claimed by him made, even though his examination shows him clearly entitled to it

Vose Willard, 47 arb. 20.

If he applies for reduction on his personal property upon the ground that he was indebted to an amount more than equal to the value of all the personal property owned by him, and upon being examined under oath in respect to the amount

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\* It is omitted in the original statute.

† So in the original.

he was owing, and the persons to whom he was indebted, stated that he could not remember whom he owed, the assessors were right in refusing to reduce the assessment under the evidence.

Id.

The assessors have the right to "disagree to" the written examination of a person applying for a reduction if it is not satisfactory to them.

Id.

They are to fix the value, after such statement as they may deem just, having in view the duty to assess the property at its full value.

People v. Fredericks, 48 Barb. 173.

They are the judges of value and are not bound by proof produced before them, but are required to exercise their own judgment, notwithstanding such proof.

People, *ex rel.* Westbrook, v. Board of Trustees, 48 N. Y. 390.

See, also, "Corporations," "Trustee, Executor," etc., *ante*.

If the claimant does not furnish evidence to discharge himself from such assessment on grievance day, and the assessors have, in good faith, used all proper means in their power to ascertain whether he is liable, the assessment is valid.

Yates v. Hughson, 14 Dig. 271.

In assessing property, if the assessors have jurisdiction over the person and property they are not individually liable for errors, otherwise they are liable.

The People, *ex rel.* Mygatt, v. Supervisors, 11 N. Y. 563; Mygatt v. Washburn, 15 id. 316.

It will be noticed by the above, that the only powers to be exercised by the assessors on review day are to *reduce, not increase*, valuation and that such reduction can be made *only* upon the application of the person aggrieved, not upon the assessors' own motion.

Clark v. Norton, 49 N. Y. 243; People, *ex rel.* Chamberlain, v. Forrest, 96 id. 544.

See notes to preceding section.

Even if the owner dies after August 1st, the roll should not be changed, although the amount might be reduced on review day upon proper proof.

McMahon v. Beekman, 65 How. 427

**§ 329. If Assessors Neglect to Meet on Review Day, Board of Supervisors may Review and Correct Assessment.**—If the assessors shall willfully neglect to hold the meeting specified in the last preceding section, each assessor so neglecting shall be liable to a penalty of \$20, to be sued for and recovered before any court having jurisdiction thereof, by the supervisor of the town, for the use of the poor of the same town, and in case of such neglect to meet for review, any person aggrieved by the assessment of the assessors may appeal to

the board of supervisors, at their next meeting, who shall have power to review and correct such assessment.

Laws of 1851, chap. 176; 2 R. S. 993.

**§ 330. Assessment-Roll, when to be Completed and Delivered to the Supervisors.—Oath to, by Assessors.**—

When the assessors, or a majority of them, shall have completed their roll, they shall severally appear before any officer of their county authorized by law to administer oaths, and shall severally make and subscribe before such officer an oath in the following form: We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll, all the real estate situated in the town (or ward, as the case may be), according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the *full value thereof*; and, also, that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation *at the full value thereof*, according to our best judgment and belief; which oath shall be written or printed on said roll, signed by the assessors and certified by the officer, and shall be in place of the official certificate now required by law. *And every assessor who shall willfully swear false in taking and subscribing said oath shall be deemed guilty of and liable to the penalties of willful and corrupt perjury.*"

Chap. 201, Laws of 1885.

If the venue is omitted, the oath is not defective.

Colman v. Shattuck, 62 N. Y. 348.

An assessment-roll not verified by one or more assessors, and not accompanied by a certificate of the other assessors stating the cause of such omission, is not defective; and the omission to properly verify it, is not fatal to its validity.

Id.

The roll is not "completed" until the oath is duly written or printed, and certified as required, nor until the assessors have discharged their whole duty in reference thereto.

People, *ex rel.* Gillies, v. Suffern, 68 N. Y. 321-326.

And the assessors can amend the oath, and thereby supply defects therein.

Parish v. Golden, 35 N. Y. 467; R., W. & O. R. R. v. Smith, 39 Hun, 332.

The oath and certificate must be in substantial compliance with the statute.

Id.; Buffalo & S. L. R. R. v. Bd. of Sup., 48 N. Y. 93; Parish v. Golden, 35 id. 462; Colman v. Shattuck, 62 id. 348.

As to defective oaths,—

See Hinckey v. Barto, 22 Hun, 253; Beach v. Hayes, 58 How. 17; The Nat'l Bank of Chemung v. City of Elmira, 53 N. Y. 49; Brevoort v. City of Brooklyn, 89 id. 128; Inman v. Coleman, 37 Hun, 170; Van Rensselaer v. Whitbeck, 7 N. Y. 517; Bellinger v. Gray, 51 id. 610.

The *safe* method is to comply with the statute fully.

This verification cannot be made until after the third Tuesday of August. If made before, it is a *nullity*.

Westfall v. Preston, 49 N. Y. 349.

**§ 331. Rolls to be Delivered to Town Clerk, etc.**—All assessment-rolls, when finally completed and verified by the assessors, shall, in towns, on or before the first day of September, and in incorporated villages and cities, at the time prescribed by their respective charters, or laws applicable to them, be delivered to the town, village or city clerk, or other officer, to whom such rolls are or may be required by law to be delivered, and there to remain with such clerk, or other officer, for a period of fifteen days for public inspection. The assessors, or other officers, who complete and verify the assessment-roll, shall, after they have delivered the same to the said town, village or city clerk, or other officers, forthwith give public notice by posting the same in at least three of the most public places in said town, village or city, or by publishing the same in one or more newspapers published therein, that such assessment-roll has been finally completed, the officers to whom the same has been delivered, and the place where the same will be open to public inspection. The fifteen days from which to complete the time within which the application for the writ of *certiorari* can be made under this act shall be the time when said public notice is first given.

Chap. 269, Laws of 1880, § 9; People, *ex rel.* U. & D. R. R., v. Burhans, 25 Hun, 186

**§ 332. Roll to be Delivered to Supervisor.**—The roll, thus certified, shall, on or before the first day of September in every year, be delivered by the assessors of each ward in the city

of New York to the clerk of the city, and by the assessors of every other town or ward, to the supervisor thereof, who shall deliver the same to the board of supervisors, at their next meeting.

2 R. S. 993, § 27.

After delivering, the assessors cannot add names, nor in any way change the roll,

Clark v. Norton, 49 N. Y. 243.

except perhaps to amend the oath.

See cases in preceding section.

Where the supervisor took out the leaves containing the non-resident lands and taxes and inserted copies, it was held not to vitiate.

Colman v. Shattuck, 62 N. Y. 348.

Such practice ought not to be followed. In some cities the time for delivering the roll is different from the above. The charter of each will govern in these cases.

The assessors in some cities are required to file the original rolls and deliver certified copies to the supervisors. Such certificate must be in *writing*, and this requirement is jurisdictional. A tax appearing upon a book, not so certified, is void.

O'Donnel v. McIntyre, 37 Hun, 615; see, also, People, *ex rel.* Twenty-third Street R. R., v. Com'rs, 91 N. Y. 593-602.

**Forms Furnished by Comptroller.**—The assessors, in the execution of their duties, shall use the forms and pursue the instructions which shall, from time to time, be transmitted to them by the comptroller.

2 R. S. 993, § 28.

**§ 333. Neglect of Assessors.**—If any assessor shall neglect, or from any cause omit to perform his duties, the other assessors, or either of them, of the town or ward, shall perform such duties, and shall certify to the supervisors with their assessment-roll the name of such delinquent assessor, stating therein the cause of such omission.

Id., § 30.

**§ 334. Duties of the Supervisor after Delivery of the Roll.**—The supervisor should carefully examine the roll delivered to him by the assessors, and see if it is correct in *form* and footings, and if not, return it for correction. While the assessors have no right to make any *changes* affecting the *substantial* requirements of the roll, they do have the right, and it is their duty, to amend and correct informalities.

R., W. & O. R. R. v. Smith, 39 Hun, 332.

See *post*, "Committee on form of Assessment-rolls," and "Form of Assessment-roll."

It is the assessors' duty to foot each page. It is the practice also for the supervisor to insert in the back part of the roll a recapitulation of the footing of each page of the roll as follows:

### § 335. Town of Whitestown.

#### RECAPITULATION FOOTINGS.

	Real.	Personal.	Aggregate.	Dogs.
First page .....	\$2,000 00	\$1,000 00	\$3,000 00	1
Second page .....	3,000 00	2,000 00	5,000 00	0
Third page .....	4,000 00	1,000 00	5,000 00	5
And so on with each page of the roll.....				
Total .....	\$3,000,000 00	\$800,000 00	\$3,800,000 00	50

#### SUMMARY.

Total valuation, personal .....	\$800,000 00
Total valuation, real.....	3,000,000 00
Aggregate valuation of Town.....	<u>\$3,800,000 00</u>

Total number of dogs taxed, 50.

R. A. JONES,  
SUPERVISOR.

When the committee on footings enter upon their duties, their labor will be lessened by the above, as they have only to check the results.

**§ 336. Tax on Land Vacant by Removal of Occupant.**— If the taxes on any farm or lot of land, assessed to a resident, shall be returned as unpaid, in consequence of such premises becoming vacant by the removal of the occupant before the collection of the tax imposed thereon, or in default of goods and chattels of the occupant to satisfy such tax, or if the taxes on any land occupied by or used in connection with any railroad, which was assessed to any person, company or corporation, owning, operating or constructing such railroad, shall be returned as unpaid, the supervisor of the town or ward in which such land was assessed shall add a description thereof to the assessment-roll of the next year *in the part thereof appropriated to taxes on lands of non-residents*, shall charge the same with the uncollected tax of the preceding year; and the same proceedings shall be had thereon, in all

respects, as if it was the land of a non-resident, and as if such tax had been laid in the year in which the description is so added. The land occupied by or used in connection with any railroad assessed to any person, company or corporation owning, operating or constructing such railroad, may be described in the following form :

“ A strip of land owned and occupied by the \_\_\_\_\_ railroad company, in the year \_\_\_\_\_, extending about \_\_\_\_\_ feet on each side of the railroad track, and embracing the same, together with all the depots, stations, turnouts, switches and other improvements thereon and connected therewith, commencing at a point where such railroad track crosses the boundary line in entering the \_\_\_\_\_ ward of the city of \_\_\_\_\_, or town of \_\_\_\_\_, and extending to the point where such track crosses the boundary line leaving such \_\_\_\_\_ ward of the city of \_\_\_\_\_, or the town of \_\_\_\_\_, or to the point of termination in the same, containing \_\_\_\_\_ acres more or less.”

Laws of 1855, chap. 427, § 5, as amended by Laws of 1876, chap. 101 ; 2 R. S. 1019.

In the case of land becoming vacant by removal of the occupant, the return by the collector unpaid, the land should be entered *by the supervisors*, as “ non-resident ” as to such unpaid tax with the proper description, and all proceedings for the collection thereof must thereafter be had as if it were land of a non-resident.

Newman v. Board of Supervisors, 45 N. Y. 676.

The amount of such tax can be ascertained from the return of the county treasurer, and *no charge* can be included or added to such tax, except the collectors' fees (five per cent), which is so made when returned to the treasurer by the respective collectors.

The heading of the return should describe what lands they are, and the collectors' affidavit should state the reason why such tax was not collected.

It is also requisite that these lands should be described and added to the assessment-roll of the *year next after* that in which the tax was levied. This is also the case in regard to non-resident lands rejected by the comptroller.

In *all cases* the lands must be returned the *next year* following such rejection ; otherwise the comptroller has no authority to admit them.

It will be seen from the foregoing, that no authority exists for relieving uncollected *resident taxes* of a preceding year, and adding the amount to the *resident tax* upon the same property the succeeding year, and that such relevy can only be done in the manner provided by said chapter 101, herein quoted. The “ description ” therein referred to must be such as will enable the comptroller (in case



of sale by him for the delinquency) to accurately and sufficiently describe the same in the deed thereof issued by him in such cases. Where the taxes so returned include those for school and highway purposes, these items so described should be stated separately.

The entry so made of resident lands in the portion of the assessment-roll *assigned to non-residents* should contain the accurate description (as heretofore stated) with the valuation, and then be charged as follows :

Resident tax of 18 . . . . .	\$
Highway . . . . .	
School . . . . .	

These items must be separate from the tax of *any other year* imposed upon the same property.

## DUTIES OF BOARDS OF SUPERVISORS AS TO ASSESSMENT-ROLLS.

### COMMITTEE ON FORM OF ASSESSMENT-ROLLS.

§ 337. On presenting the rolls to the board of supervisors, they are generally referred to the "committee on forms of the assessment-rolls," whose duty it is to examine the same and see if the rolls are correct in "form;" that is to say, to see that the proper affidavits and certificates are attached and sworn to *after* the third Tuesday of August, and that the other *formalities* specified in the preceding sections are complied with. From this committee the rolls go to the one below.

### Form of Report.

TO THE BOARD OF SUPERVISORS OF ONEIDA COUNTY:

Your committee appointed on forms of assessment-rolls respectfully report:

That they have examined the assessment-rolls of the several towns and wards in the county, and find the same to be correct.

JACOB DURR,  
CHAIRMAN.

### Committee on Footing of Assessment-Rolls.

The duties of this committee are to see that the rolls are correctly footed. They cannot complete their work until the committee on "erroneous assessments" report, so that the changes in assessments can be properly made and inserted in the roll before the footing committee finish the footings.

### § 338. Form of Report.

#### REPORT OF THE COMMITTEE ON FOOTING ASSESSMENT-ROLLS

TO THE BOARD OF SUPERVISORS OF THE COUNTY OF ONEIDA:

Your committee beg leave to submit the following tabular statement, compiled from the rolls of the several towns and wards, as the assessed valuation of this county for the current year:

TOWNS.	Acres.	Real Estate.	Personal.	Total.	Dogs.	Dog Tax.
Annsville.....	36,152	\$570,418 00	\$13,700 00	\$584,118 00	187	\$199 00
And so on.....						
	721,870½	\$48,129,373 58	\$4,993,428 20	\$53,122,801 78	4554	

All of which is respectfully submitted.

UTICA, December 30, 1885.

J. F. GETMAN,  
CHAIRMAN.

**§ 339. Committee on Erroneous Assessments.**—An examination of the proceedings of the board of supervisors throughout the State shows that the duties and powers of the board in relation to assessments and assessment-rolls are greatly misunderstood; that they are altering and changing the rolls in many cases where they have no right so to do.

It is wise to remember that their jurisdiction is inferior, local and limited.

They are not vested with *absolute* powers of legislation nor with absolute control of assessments or the assessment-rolls.

Such powers as they have are conferred by some statute, expressly or by necessary implication.

If no statute can be found, allowing them to act, they ought *not* to act in the matter.

With two exceptions which are stated below, the board of supervisors have no right to *review* the proceedings of the assessors, or to *interfere* with the *valuation decided* on by the assessors who are the *sole judges of values, exemptions, property liable to taxation*, etc.

If the assessors decide that certain property is "*exempt*," the

board of supervisors cannot decide that it is *not exempt*, and insert it in the roll,

People, *ex rel.* Sup. of Munroe, v. Hadley, 1 Abb. N. C. 441.

or that *part* of it is exempt.

Id.

See *ante*, "Review Day," and "Assessment-Roll"; "Deposit for Inspection," and "Omitted Property," and "Valuation of Property."

Marsh v. Bowen, 12 Abb. N. C. 1; Westfall v. Geere, 49 N. Y. 349.

It is the duty of tax payers to examine the assessment-rolls during the time the same are open for public inspection. If over assessed, to appear before the assessors on review day, submit their proofs properly, and if denied relief there, to apply to the *courts*, *not* to the board of supervisors for relief.

If they *neglect to do so the courts will not aid them*,

*In re* Hermance, 71 N. Y. 481-486; People, *ex rel.* Mutual Union Tel. Co., v. Com'rs, 99 id. 254; Sherman v. Trustees, 27 Hun, 390; Mayor v. Davenport, 92 id. 604-613.

and there is no other tribunal, but possibly, the legislature of the State, which can relieve them, except the two cases mentioned below.

If the board attempt to act in cases wherein they have *no* jurisdiction, the *members are individually liable* therefor.

Westfall v. Preston, 49 N. Y. 349; Clark v. Norton, id. 243; Bellinger v. Gray, 51 id. 610.

So that it is quite important for the members to know, that a *statute* authorizes their action in these cases, otherwise *they* may be compelled to foot the expenses and costs of illegal acts out of their own pockets.

**First.**—If the assessors neglect to meet on "review day" *any person aggrieved* by the assessment may appeal to the board of supervisors at their next meeting, who shall have power to review and correct *such* assessment.

Chap. 176, Laws of 1851; 2 R. S. 993.

This gives them full power, where the assessors fail to so meet, to review and correct the assessment, not of the whole assessment-roll, but of *such persons only as appeal*.

**Second.—Reserved Rents in Leases, in Fee, Etc.**—By chapter 327, Laws of 1846, see *ante*, section 311, the assessors are to ascertain the amount of rents reserved in any leases in fee, or for one or more lives, or for a term of years exceeding twenty-

one years, and chargeable upon lands within a town or ward, and to assess to the person or persons entitled to receive the same as personal estate \* \* \* at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents; and in case such rents are payable in any other thing except money, the value of such annual rents in money shall be ascertained by the assessors, and the same shall be assessed in manner aforesaid. If the names of the owners thereof cannot be learned by the assessors, the same shall be assessed against the tenant or tenants in possession of the lots as rent reserved.

Chap. 327, Laws of 1846; 2 R. S. 997.

The assessors shall, in all cases of assessments under chapter 327, Laws of 1846, specify in the assessment-rolls each rent so assessed, and the value fixed upon articles, other than money, in which such rents are payable, and *whenever assessments are made against any person in any town or ward in which he does not reside, the board of supervisors of the county in which such assessments are returned, shall have in all respects as full power and authority, and it shall be their duty, to correct such assessments as to the valuation of the rents, and as to the gross amount for which such person shall be assessed, as the assessors have, as to a resident of the town; and such board of supervisors may reduce the amount of such assessments in the respective towns or wards of the county, in proportion or otherwise, as the nature of the corrections require to make such assessments just.*

Chap. 357, Laws of 1858; 2 R. S. 999.

These are rare cases. The only power the board of supervisors have in the matter is in the case of a *non-resident* of the town or ward.

People, *ex rel.* Youmans, v. Sup., 60 N. Y. 381-4.

And if the assessors have assessed *correctly according to law*, even then the board cannot change their work.

Id., and 47 How. 24.

**Third.—Non-resident Lands.**—The board of supervisors shall also make such alterations in the descriptions of the lands of non-residents as may be necessary to render such descriptions conformable to the provisions of this chapter; and if such alterations cannot be made, they shall *expunge* the descriptions of such lands, and the assessments thereon, *from the assessment-rolls*.

2 R. S. 996, § 32.

**§ 340. Omitted Lands of Preceding Year.—**

The proceedings of assessors in relation to these cases are set out in full, *ante*.

See "Omitted Property," § 325, *ante*.

Having properly inserted the lands legally liable to taxation, which were omitted in the assessment-roll of the *next* preceding year upon the application of three tax payers, the assessors petition the board of supervisors, showing all these facts, whereupon the board have the right to levy a tax thereon, at the same rate per cent of the tax imposed upon land or property in said town, city or ward in the *preceding* year.

Chap. 453, Laws of 1865, § 2; 2 R. S. 1002.

**§ 341. Lands Omitted, Current Year.—**Upon the petition of the assessors of any town, city or ward, that any land or property in any town, city or ward in the State has been omitted in the assessment-roll of the current year, the board of supervisors shall insert the same in the assessment-roll of said town, city or ward, at the *valuation* of the *preceding* year, and tax the same at the rate per cent of the current year.

*Id.*

The valuation must be of the *preceding, not the current, year*. They have no power to assess it at any other valuation whatever except that of the *preceding year*.

Marsh v. Bowen, 12 Abb. N. C. 1; People, *ex rel.* Oswald, v. Goff, 52 N. Y. 434; People, *ex rel.* Brooklyn City R. R., v. Board of Assessors, 92 id. 430.

If the property does not appear on last year's assessment-roll it cannot be valued or taxed in the current year.

*Id.*

**§ 342. Amount to be Deducted from Other Taxes.—**The whole amount of tax levied upon land or property omitted in the tax levy of the preceding year shall be deducted from the aggregate of taxation to be levied upon said town, city or ward for the current year, before such tax is levied, and shall be collected by the same authority and in the same manner as the ordinary taxes of the current year are collected.

Chap. 453, Laws of 1865, § 3; 2 R. S. 1002.

**CORRECTING MISTAKES, MANIFEST ERRORS, ETC.**

**§ 343. Powers of Boards of Supervisors to Levy Tax in Cases of Mistakes in Transcribing Assessment-Rolls.—**Whenever it shall be made to

appear to the supervisors of any county by the petition of the assessors of any town in said county, or otherwise, that any land or property legally liable to taxation in said town has, by any mistake in transcribing or copying the assessment-roll of the preceding year, been placed on the assessment-roll annexed to the warrant delivered to the collector at a valuation less than that *actually appearing* upon the *original assessment-roll signed by the assessors*, said board of supervisors shall proceed to levy tax on the same upon a valuation equal to the difference between the actual valuation made by the assessors and the amount at which, by such mistake, it was placed upon such roll, and at the rate per cent of the tax imposed upon land or property in said town in the year in which said mistake occurred.

Chap. 453, Laws of 1865, and chap. 575, Laws of 1868; 2 R. S. 1002, § 4.

See notes to second section next above and chap. 306, Laws of 1886.

**“Manifest Errors.”**—The board of supervisors of any county, except New York and Albany, by a vote of two-thirds of all the members elected thereto, may correct any manifest clerical or other error in any assessments or returns made by any town officer to such board, or which shall properly come before such board for their action, confirmation or review.

Chap. 855, Laws of 1869, as amended by chap. 326, Laws of 1885. See chap. 306, Laws of 1886.

As these two cases are governed by the same principles they will be discussed together.

It is these cases which seem to be most misunderstood.

They are interpreted as allowing the board to correct almost every thing that may be asked for; as sanctioning the review of the assessors' valuations and decisions; as allowing names, amounts and taxes to be changed at pleasure on the roll, as allowing clergymen and others to be given deductions and exemptions on their assessment, etc.

The meaning of the statute is clear. It does not give the board of supervisors power to *review* valuations, and then increase or diminish them, according to their notions of, what they should be.

It is simply to compare the *copy* of the assessment-roll brought to them by a supervisor, with the original roll made and deposited by the assessors, for public inspection, on or before August first (and if on review day reductions were made on the application of a tax payer, such reductions should appear on the original). Whatever thus appears on the original ought to appear in the copy used by the board of supervisors, and the said copy may be *changed* to correspond with the original under this law.

The sources to which they can look for the errors are the original and copy *only*. If the error is not “*manifest*” on *such comparison*, it is not within the power of the board of supervisors to correct it.

The *valuation* fixed by the assessors is conclusive on that point, until set aside by a proceeding in the courts, instituted for that purpose.

Albany & W. S. R. R. v. Town of Canaan, 16 Barb. 244; Mayor etc., v. Davenport, 92 N. Y. 604; People, *ex rel.* v. Halsey, 37 id. 344.

If the rolls are regular on their face, the board of supervisors cannot enter into an examination to see if the assessors have done their duty.

Id.; *Westfall v. Geere*, 49 N. Y. 349.

The authority to correct any manifest clerical or other errors in any assessments or returns was not intended to and does not subject all assessments to review or permit a correction of all errors, but simply of those which are *manifest*, that is apparent by an examination of the assessment-roll or return, *needing no extrinsic evidence* to make them *clear*, and which are also clerical or other errors in the assessments or returns, that is some error of *form* in the assessment-roll, not an error of the assessors in making the assessment, nor any substantial error of judgment or of law.

*In re Hermance*, 71 N. Y. 481; *People, ex rel. Chamberlain, v. Com'rs*, 96 id. 544.

The words "or other errors" mean errors of "*form*," not *substance*.

Id.

The omission of the assessors to deduct the assessed value of the real estate of a bank from the value of its shares of stock is not a "manifest clerical or other error" to be corrected by the board of supervisors.

*In re Farmers' National Bank of Hudson*, 1 T. & C. 383.

Where Mr. W. petitions that he is assessed for 278 3-4 acres, when in fact he only owns 249 3-4 acres, and is assessed therefor at \$4,759 instead of \$4,266, the board of supervisors have no power or right to help him — his remedy was on "review day" before the assessors, and if refused, to apply to the courts. That is the only method prescribed by law.

Mistakes in addition can be properly changed.

In one county the name of "John Fisher" was changed on the assessment-roll to "John Fuhrer," and his assessment from "\$1,000" to "\$500." This was illegal and improper unless the name of "John Fuhrer" and "\$500" appeared on the original roll. Another struck off the name of "G. E. U." assessed for real estate \$200.

This was also illegal and improper for a like reason, *except* as above provided. Another changes the assessment of "T. D. as guardian," to "F. B."

This is also illegal.

Another changes the assessment of N. K. to Mrs. N. K.

These are also illegal unless the original showed the name of "F. B." and "Mrs. N. K."

The reason for the limitation of the supervisors' power is quite obvious. They levy the taxes. If they could also change the assessment-rolls in names and amounts, at their own pleasure, then all the taxes could be placed on one man, one corporation or one town, and the rest stricken from the rolls, as "*manifest errors*."

To avoid this, two separate and distinct classes of officers are provided, to fully and finally complete assessments.

One, the assessors who "*value*" and "*name*;" the other the board of supervisors, who levy taxes and place the amount, on the roll, opposite the "*name*" and "*value*" furnished by the assessors.

The functions of the two classes are distinct, entirely separate and independent. The safe rule for the supervisors to adopt, as a general thing, is to place opposite the names and values they find on the assessment-rolls produced before them, the amount of tax levied.

If the assessors have acted *illegally*, the tax payer has his remedy against them.

If the tax payers neglect to avail themselves of "review day" and proceedings through the courts, they have only themselves to blame for it.

If the rolls are regular on their face, the supervisors should, as a rule, leave them alone.

The exceptions to the rule are given in the statutes above quoted. If an assessment-roll is not regular on its face a different question arises —

For instance —

A. is assessed for "\$10,000 — United States securities." Such an assessment is *void*. The property is *wholly* exempt. Being void, and the roll showing, on

its face, such fact, the supervisors could not levy a tax thereon without making themselves personally liable. In such case it is properly stricken from the roll, not because it is a manifest clerical error, but because a "void" act is *void*, always and everywhere.

Westfall v. Geere, 49 N. Y. 349; Bellinger v. Gray, 51 id. 610.

The assessors never had any jurisdiction over such property. and for the purposes of taxation it is the same as if it never existed, or as if it were situated in the moon.

But if the property does come within the jurisdiction of the assessors, as a clergyman's property assessed \$1,500.01 which is *partly exempt*, in such case the board have no right to alter, change or interfere with the valuation.

Id.; Barhyte v. Shepherd, 35 N. Y. 238; Weaver v. Devendorf, 3 Denio, 116.

## § 344. Form of Report.

TO THE HONORABLE BOARD OF SUPERVISORS OF ONONDAGA COUNTY:

Your Committee on Erroneous Assessments, to which were referred the several matters hereinafter set forth, beg leave to report as follows:

### TOWN OF A.

On the petition of the assessors of the town of A., to correct the assessment-roll of 1885 of said town, in the case of Frank P. Avery, your committee report in favor of said petition, and that the sum of \$4,490 be added to the town-roll and assessed to Frank P. Avery, that being the amount assessed to him in the year 1884.

(And so on with each town in alphabetical order.)

All of which is respectfully submitted.

Dated , 1885.

A. B.,  
C. D.,  
E. F.,  
COMMITTEE.

In Oneida county this committee is furnished with a printed report blank, having upon it the instructions for the committee's use. A copy is as follows:

TO THE BOARD OF SUPERVISORS OF THE COUNTY OF ONEIDA:

The Committee upon Erroneous Assessments, to which was referred the application of , for the correction of errors in the assessment-roll of

, the current year, report that they have duly examined the same and find that the alleged errors are sustained, and recommend that the same be corrected by the supervisor thereof, in accordance with the prayer of the petition.

Dated UTICA, , 18 .

CHAIRMAN.

(The committee will detach these instructions from the report.)

## INSTRUCTIONS TO THE COMMITTEE ON "ERRONEOUS ASSESSMENTS."

"WHEREAS, Applications for the correction of alleged errors in the several assessment-rolls of this county are becoming numerous, rendering it very important that a uniform system should be established by this board upon such applications; therefore

"Resolved, That in the future all such applications must be presented *within five days* from the commencement of the annual sessions of the same.



*"Resolved, That such applications must be upon the petition of aggrieved parties, clearly stating the basis of the alleged error, which statement must be duly verified by the applicant and accompanied by the certificate of a majority of the assessors of the town or city where the property is located, asserting that the said statement of errors is correct; except in cases of double assessments, which may be established by the production of the assessment-rolls containing such assessments.*

*"Resolved, That upon the presentation of such petitions, the same shall be referred to the standing Committee on Erroneous Assessments, who shall proceed*

*"First. To examine the same and determine whether it is in conformity to this resolution.*

*"Second. To ascertain if it is within the powers and jurisdiction conferred upon this board by chapter 855, Laws of 1869 (as amended by chapter 326, Laws of 1885).*

*"Third. To ascertain and determine if the averments of error are fully established, and report each case separately with their conclusions thereon to the board for its action.*

*"Resolved, That the action and judgment of a majority of the assessors in each of the several cities and towns in fixing and determining the value of real estate therein is final and conclusive, and this board will not hereafter entertain applications to change the same."*

**§ 345. Resolution Confirming Alterations in the Rolls.**—Having made such changes in the rolls as the board are authorized to make, a resolution in the following form will make the changes so made by the committee, the act of the board of supervisors :

WHEREAS, Certain manifest clerical errors and errors in footing existed in the assessment-rolls and assessments presented to this board by the officers of the several towns and wards of this county for their action, confirmation or review, and the same have been corrected by the committee on footing assessment-rolls, as follows: (*here specify the changes*).

*Resolved, That the corrections so made by said committee, and the assessments and valuations as corrected on said assessment-rolls, be, and the same are hereby ratified, confirmed and legalized in pursuance of chapter 855, Laws of 1869, as amended by chapter 326, Laws of 1885.*

## AS TO STATE TAXES.

**§ 346. To Levy and Collect Amount of State Tax Which Each County is to Pay, as Fixed by State Board of Equalization.—Mandamus to Compel.**—A statement of the amount of assessment for each county, as fixed by the board of equalization, shall be certified by said board and deposited in the office of the comptroller, as soon as completed, and before the 10th day of October in each year. The comptroller shall immediately ascertain from this assessment the proportion of State tax each county shall pay, and send a statement of the amount, by mail, to the county clerk and the chairman and clerk of the board of supervisors of each county. If the name or residence of the chairman or clerk of the board of supervisors shall be unknown to the comptroller, he may inclose such statement in an envelope addressed to him by his name of office, and directed to the county town of the county. The county clerk shall file the state-

ment received by him, in his office, and immediately send a copy thereof to the chairman of the board of supervisors of the county.

Laws of 1859, chap. 812, § 8; 2 R. S. 1000.

The amount of State tax which each county is to pay, so fixed and stated by the comptroller as aforesaid, shall be assessed by the supervisors or other officers authorized to make the assessment of State taxes, in the tax-roll for the calendar year in and for which the same shall have been ascertained and stated by the comptroller, as aforesaid, and shall be included in and collected by the annual collection of taxes in the several counties, in the manner prescribed by law; and if the board of supervisors, etc., shall neglect or refuse to include and assess such tax, or any part thereof, in said assessment-roll, then the comptroller of the State may immediately proceed by *mandamus* before any court having jurisdiction, to compel the board of supervisors or other officers required to make such assessment to do the same or make a new assessment for the same, which shall be collected as provided for the collection of other taxes.

Id., § 9, as amended by Laws of 1874, chap. 351, § 3.

### REFUNDING TAXES.

**§ 347. By Board of Supervisors to Refund Taxes, after Determination of an Action Against Counties.**—By the act of April 21, 1870, to provide for relief from erroneous or illegal assessments and taxation of farms or lots of land divided by the county line between towns, it is provided that after the final determination of an equitable action in the supreme court brought by a tax payer against counties, for the recovery of taxes wrongfully collected, or of the appeal, if one be taken, the board of supervisors of the county against which the judgment shall be rendered requiring it to refund said taxes, are authorized and required to pay the amount thereof with interest from the time of its rendition, and cause the amount thereof to be levied upon the taxable property of said county and paid to the plaintiff therein. And in assessing and levying such tax they shall adjust and apportion the same upon the different towns and cities therein as in their judgment shall be equitable, taking into consideration the amount of State, county and local tax included in such original assessment.

Laws of 1870, chap. 325, § 4.

No claim shall be made upon the State by such county or any town or city therein, for the payment of any part of said tax so refunded.

Id., § 5; 2 R. S. 1002-3.

**Refunding Tax Illegally Assessed.**—The board of supervisors are authorized to refund to any person the amount collected from him of any tax illegally or improperly assessed or levied. In raising the amount so refunded, such board shall adjust and apportion the same upon the property of the several towns and wards of the county as shall be just, taking into consideration the portion of State, county, town and ward tax included therein and the extent to which each town or ward has been benefited thereby.

Chap. 855, Laws of 1869, § 5, as amended by chap. 326, Laws of 1885.

This act was intended to relieve persons by reimbursement thereof, from taxes which were not legally chargeable to them or on their property, *i. e.*, from taxes which they should not be required in *any* manner to pay. The act refers to the tax itself rather than to the *method of making the assessment or levy*; to an illegal rather than to the *erroneous assessment or levy of a legal tax*.

*In re Harris v. Bd. of Supervisors*, 33 Hun, 279; *In re New York Catholic Protectorate*, 77 N. Y. 344.

Not to a case of error of judgment, in determining the amount to be assessed or levied.

*Id.*; *In re Hermance*, 71 N. Y. 481.

Over-valuation of property, whereby one is compelled to pay more than his share of taxes, cannot be corrected under this act, nor can a tax on such over-valuation be refunded thereunder.

Cases *supra*.

**§ 348. Taxes on Lands of Non-Residents for any One Year—Overcharges.**—Any person may pay the tax for any one year and the interest and charges thereon, on any tract or lot of land, without paying the tax of any other year; and in case any tract or lot of land shall have been returned as containing a greater quantity of land than it shall actually contain, the amount overcharged shall be deducted, or if the tax shall have been paid according to such return, shall be refunded out of the treasury, on satisfactory proof being produced to the comptroller of the quantity actually contained in such tract or lot, at any time before the sale of such lands; but no such overcharge shall be canceled, nor shall such over-payments be refunded, unless application shall be made to the comptroller therefor within six years after the assessment of such overcharge.

Laws of 1855, chap. 427, § 30; 2 R. S. 1023.

**§ 348½. Overcharges to be Recharged to County.**—If the whole amount of the tax, in case of such overcharge, shall have been paid to the county treasurer, out of the treasury of this State, the comptroller shall charge the amount so refunded, with interest and charges thereon, to the treasurer of the

county from which the tax was returned and shall transmit an account thereof to him.

2 R. S. 1023, § 31.

**§ 349. Town to be Liable Therefor.**—Such county treasurer shall deliver such account to the board of supervisors at their then next meeting, who shall cause the amount thereof to be added to the proportion of the charges of the county to be raised in the town in which the tax was laid.

Id., § 32.

The above relate to the collection of taxes on lands of non-residents.

**§ 349½. Tax to be Extended.**—After the committees on erroneous assessments and footing assessment-rolls report, the rolls go to the equalization board or committee.

The subject of "Equalization" will be treated later.  
See "Equalization."

The board of supervisors shall also estimate and set down in a fifth column, to be prepared for that purpose in the assessment-rolls, opposite to the several sums set down as the valuations of real and personal estates, the respective sums in dollars and cents, rejecting the fraction of a cent, to be paid as a tax thereon.

2 R. S. 996, § 33.

**§ 350. Collector's Fees Not to be Added.**—Whenever any board of supervisors shall make out any tax-list and warrant, they shall not add thereto the fees of the collection, but such fees shall be paid and collected as above prescribed in sections 29 and 30 of this act.

Laws of 1845, chap. 180, § 31.

The twenty-ninth and thirtieth sections referred to provide for a percentage in addition to the tax.

As a general thing, each supervisor places or enters the tax on the roll of his own town or ward. In doing so, a sheet prepared in the following manner will be of great convenience:

#### TOWN OF

Valuation of assessors .....	\$
Whole amount to be raised .....	
Ratio        on the dollar.	
Amount to be paid to commissioners of highways .....	\$
Amount to be paid to supervisor .....	
Amount dog tax to be paid to supervisor .....	
Amount of county tax to be paid to the county treasurer .....	

Total .....	\$
-------------	----

## DIRECTIONS TO THE PERSON WHO ENTERS THE TAX ON THE ASSESSMENT-ROLL.

Commence by *proving* the ratio, which is done by multiplying the amount of the assessor's valuation by the ratio, and the product should be the amount to be raised.

Should it prove so, ascertain the amount of tax which the ratio gives on the sums in the annexed table, and place the result opposite each sum. You then have a table from which you may readily fill most of the blanks in your tax list.

In entering the tax, so apportion the fractions as to provide for any deficiency or surplus which your ratio may give, and bring out your whole tax even with the amount to be raised.

Prove every page of your book as you proceed, by footing up the amount of the tax as extended therein; multiply the footing of the valuation on the page by the ratio, and if the two sums agree, the entries for the page are correct. By changing the decimal point, the tax as shown in the table upon \$10, will exhibit the amount upon \$100, \$1,000, \$10,000, etc.

Amount of tax on		Amount of tax on		Amount of tax on		Amount of tax on		Amount of tax on	
\$1	.00871507904	\$21	.1830166598	\$41	.3573182406	\$61		\$81	
2	.01743015808								
3	.02614523712								
4	.03486031616								
5	.04357539520								
6	.05229047424								
7									
8	<i>And so on</i>								
9	<i>with each</i>								
10	<i>column.</i>								
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

See "Committee on Ratio and Apportionment," *post*

### § 351. Form of Assessment-roll, with Tax Extended.

A railroad corporation owning real estate is a "resident" of the town wherein its road is situated, and taxed and assessed in the same manner as an individual, as follows :

FOR THE YEAR 1885.

ASSESSMENT-ROLL OF THE TOWN OF

LANDS OF RESIDENTS.

Column No. 1.	Column No. 2.	Column No. 3.	Column No. 4.	Column No. 5.	Col. No. 6.	Column No. 7.
Names of all taxable inhabitants in the town.	Quantity of taxable land taxed to each in acres.	Full value of taxable land in dollars.	Full value of all taxable personal property, after deducting just debts owing, in dollars.	Amount of tax in dollars and cents.	Dog tax in cents.	Remarks.
Doe, John.....	100	\$500 00	.....	\$2 00	50	Deducted \$1,500 for his exemption.
Doe, John.....	.....	.....	\$1,000 00	4 00		Deducted \$5,000 U. S. securities, exempt.
Doe, John.....	200	2,000 00	.....	8 00		Capital..... \$100,000
Dougherty, James, Rev. ....	10	100 00	.....	40		Real estate..... \$5,000
Douglass, Henry, as trustee of John Smith's estate.....	.....	.....	1,000 00	4 00		Fish Co. stock.. 1,000
Dow Manufacturing Company.....	1/2	5,000 00	.....	20 00		<u>\$6,000</u>
Dow Manufacturing Company.....	.....	.....	100,000 00	400 00		Taxable ..... \$100,000
New York and Harlem Railroad Company.....	Tunnels, tracks, superstructure, road-bed, and masonry on and under Fourth avenue between Forty-fifth and Eighty-sixth streets .....	1,500,000 00	.....	5,000 00		Ward, No. 132.
Footings .....	\$10 7/8	\$1,507,600 00	\$102,000, 00	\$5,438 40	\$0 50	

See People, *ex rel.* N. Y. & H. R. R., v. Com'rs, 101 N. Y. 322.

As to personal property taxed where the principal office of the corporation is located, the *fourth* column is used for inserting the value of capital stock after deducting the exemptions allowed. See above, "Dow Manufacturing Company."

LIST OF LANDS BELONGING TO NON-RESIDENTS IN TOWNSHIP NO. 1,  
RANGE 3.

FORMERLY KNOWN AS THE HOLLAND LAND COMPANY'S LANDS.

Number of lot.	Number of township.	Number of range.	Number of acres.	Full value of land, in dollars.	Amount of tax in dollars.	Remarks.
54	1	3	150	\$500 00		

See *Colman v. Shattuck*, 5 T. & C. 34-39; S. C., 62 N. Y. 348-362, or the following form.

LANDS OF NON-RESIDENTS.

No. of lot.	Name of tract or patent.	No. of sect'n.	No. of township.	No. of range.	No. of acres.	Full value of land in dollars.	Amt. of tax in dollars.	Remarks.
1	Holland Land Company.....	1	2	1	100	\$500 00	\$5 00	
2	Holland Land Company.....	1	3	2	500	800 00	8 00	
Part of 3, S. W. $\frac{1}{4}$	Holland Land Company, and being a parcel of land bounded as follows (here insert description fully as in a deed).....	1	2	2	300	200 00	2 00	

The following descriptions and rolls have been held *insufficient*.

COLUMBUSVILLE.

Street.	Side.	Number.	Block.	Size.	Tax.
Newtown road.....	North .....	6	P.	25	. 85

*Pink v. Barbin*, 17 Dig. 521.

Outer lot.	Block.	Feet front.	Feet deep.	Line.	Name of street.	Side street.	Distance from what street.			Total value.	Tax.	
							Feet.	Corner.	Street.		Dol.	Cts.
93	..	65	185 30	N. E. rear.	Exchange. .....	S. ....	207½ ....	E. ....	Beak. ....	8,500 00 .....	44	10

*In re* N. Y. C. & H. R. R. Co., 90 N. Y. 342.

### CITY OF KINGSTON TAX-ROLL FOR THE YEAR 1872.

#### WARD No. 8.

Names of taxable inhabitants.	Quantity of land.	Value, real.	Value, personal.	Total valuation.	General tax.
Foster, Joseph, <i>or occupant</i> .....	.....	\$1,200	... ..	\$1,200	\$86 07

Dubois v. Webster, 7 Hun, 371.

### LOTS RETURNED FOR BUFFALO STREET IMPROVEMENT.

#### MIDDLE SECTION.

Names of possessors or reputed owners.	General tax.
— of Ogden, lot 40.....	\$2.35

Hubbell v. Weldon, Hill & Denio, 139.

"The following piece \* \* \* in the county of Sullivan, Minisink patent, division one (1), lot twenty-eight (28), four hundred and fifty-five (455) acres, more or less, bounded north and south by the lot lines, east *by resident land* and west by the town of Forestburgh."

Oakley v. Healey, 38 Hun, 244.

The faulty boundary was "*east by resident land.*"

See, also, *In re* N. Y. C. & H. R. R. R., 70 N. Y. 191; Hubbell v. Weldon, Hill & Denio, 139; Thompson v. Burhans, 61 N. Y. 52; Tallman v. White, 2 id. 66.

The above will illustrate the principles determining these cases.



The following circular sent out by the comptroller shows his views in the matter:

(No. 200.)

STATE OF NEW YORK :  
COMPTROLLER'S OFFICE,  
ALBANY, \_\_\_\_\_, 188 . }

TO THE ASSESSORS OF THE TOWN OF \_\_\_\_\_

GENTLEMEN — Inclosed herewith we send you a copy of chapter 280 of the Laws of 1886, which authorizes, under certain conditions, the taxation of "wild or forest lands" belonging to the State within the Forest Preserve. In order to satisfy this department and the forest commission that no unjust discrimination has been made against the State in the valuation of such lands, but that State lands in your town are assessed for no larger sum than lands of the same class belonging to individuals, as well as to facilitate compliance with the provisions of said act, *all the requirements of which will be strictly enforced*, you will please carefully read and observe the following general directions, viz.:

*First.* Your assessment-roll must be divided into three parts, respectively headed, "Resident Lands," "Non-resident Lands," and "Wild or Forest Lands belonging to the State."

*Second.* All the laws governing the assessment of non-resident lands will apply to and *must govern* the assessment of State lands; and, furthermore, the assessment of all lands, *no matter under what head they may come*, must show the character of the lands assessed. In designating such character, the following words, which will have the meaning set opposite each, will be employed:

"CLEARED." Meaning improved lands of any kind, including fallows.

"MEADOW." Meaning wild, unused meadow lands. If pastured or mowed, or used by any one, they become thereby cleared lands.

"WATER." Meaning lands covered by considerable bodies of water.

"WASTE." Meaning rocky, barren or sterile lands, incapable of raising a forest.

"BURNT." Meaning lands burnt over since June 1, 1885.

"DENUDED." Meaning lands stripped of timber, by fire, prior to June 1, 1885, or from any other cause, at any time, and not yet occupied by a new growth of trees.

"LUMBERED." Meaning forest lands from which the soft timber has been removed.

"FOREST." Meaning virgin forests, unharmed or untouched by ax, fire or floods."

In many instances a lot or parcel of land may possess a variety of characters, in which cases the proportion, as near as the same can be estimated without an actual survey or measurement, as well as the value of each part, must be separately and plainly given. The following examples, adapted to each division of the assessment-roll, fully and clearly illustrate the mode of characterizing land and valuing it in accordance with its character:

#### RESIDENT LANDS.

Names of Taxable Inhabitants.	Acres.	Value of Land Taxed.	Total Value.
Doe, John. ....	50 cleared .....	\$500 00	\$500 00
	80 water.....	.....	
	160 cleared.....	640 00	
Roe, Richard.....	800 { 80 burnt.....	40 00	
	160 lumbered.....	160 00	
	320 forest.....	640 00	1,480 00

## NON-RESIDENT LANDS.

No. of Lot.	Description of Land.	Acres.	Value of Land.	Total Value.
1	Totten and Crossfield's Purchase, Township 44.	1050	meadow.....	\$2,100 00
5	.....	1050	100 cleared.....	400 00
	.....		600 water.....	120 00
	.....		100 burnt.....	50 00
	.....		250 denuded..	60 00
8	.....	1050	320 water.....	.....
	.....		550 forest.....	2,200 00
	.....		180 lumbered..	360 00
				2,560 00

## WILD OR FOREST LANDS BELONGING TO THE STATE.

No. of Lot.	Description of Land.	Acres.	Value of Land.	Total Value.
9	Benson Township.	160	burnt.....	\$40 00
14	.....	160	80 waste.....	20 00
29	.....	160	80 lumbered..	40 00
	.....	160	denuded.....	20 00
	Totten and Crossfield's Purchase, Township 8, S. W. $\frac{1}{4}$ ,			
	S. W. cor.....	2500	100 cleared ...	.....
			250 water.....	.....
			500 meadow...	1,000 00
			1000 lumbered.	1,000 00
			650 forest.....	1,300 00
				3,300 00

*Third.* As wild or forest lands are the only State lands subject to assessment, the acreage thereof "cleared" or "water" should be designated, but such acreage should not be assessed.

*Fourth.* Your oath, as assessors, cannot be made on the roll until after review day, or the third Tuesday of August; but such roll can be so progressed by the middle or latter part of July as to be virtually completed, a copy of which, showing your assessment of State lands subject to taxation, must, on or before August first in every year, be filed in this office, and another in the office of the forest commission. At the end of the said copy-rolls to be filed in this office and the office of the forest commission, you should cause to be written the following form of oath, which should be sworn to by each assessor or by a majority of the board, before a competent officer:

"We, the undersigned, assessors of the town of \_\_\_\_\_ in the county of \_\_\_\_\_, do severally depose and swear, that the preceding is a true copy of the assessment-roll of said town for 188; that we have set down in the foregoing assessment-roll all lands in said town that we

have been informed belong to the State ; that we have designated to the best of our information and belief, the character of each parcel of land assessed, whether belonging to the State or individuals; that the value of State lands has been determined from their character, and the value of lands of the same class and character assessed to individuals or as non-resident lands; and that no fallows, or cleared or improved lands of any kind, belonging to the State, have been assessed, but that the only State lands assessed by us have been wild or forest lands."

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

ASSESSORS OF THE TOWN OF \_\_\_\_\_

Subscribed and sworn to before me, this }  
 \_\_\_\_\_ day of \_\_\_\_\_, 188 . }

\_\_\_\_\_

See "Section 352," *post*.

§ 352. In assessing lands, if one person own two or more separate, distinct and disconnected pieces or parcels thereof, each piece or parcel should be assessed and valued *separately* and so entered upon the roll. The amount of tax against it should be entered *opposite* to this *separate entry* and not "aggregated" or combined. This is especially to be followed in assessing non-resident lands, wherein the *name* of the owner does not appear and consequently no *personal* liability attaches to him. In such case, the lien is upon the land only. Not a general lien upon *all* the lands owned by him in that town, but upon the *particular separate piece mentioned and described* in the roll. It is the safest course in every case, resident or non-resident, to assess separately each separate disconnected piece.

Welty Law of Assessment, §§ 110 *et seq*.

In fact, the better way is to abolish the use of the "aggregate" or "total" column now printed in the assessment-rolls, both for real and personal property.

"Where real and personal property, also where separate parcels of real property and distinct classes of personal property, are embraced in the same assessment to the same owner, each should be valued *separately*."

Id., § 141.

"The tax payer has a right to know how much *each* tract and

class of property has been valued at, so that he may exercise his right to apply . \* \* \* for correction or reduction."

Id.

If a change in ownership is made between July first and the time taxes are levied by the board, the rolls will show on their face what piece is affected by the tax set opposite, and the persons interested in that particular piece can pay the amount levied, and thereby relieve the lien.

Where such pieces are in the possession of tenants, or are worked on shares, etc., each person will be enabled to pay the tax on the piece in which he has an interest, without regard to other pieces owned or in the possession of other persons.

No matter how large the tract, if owned by the same owner, and is not subdivided by him, and is connected and used as one tract or parcel, the assessor must assess and value separately. This is the rule in this State.

Thompson v. Burhans, 61 N. Y. 62.

In counties having lands of the kind mentioned in the comptroller's circular, care must be used in carrying out the separate assessment of separate, distinct parcels. For instance: In resident lands to "Richard Roe, 800 acres." The "form" suggested is correct, provided the 800 acres are in one parcel. If there were two or more parcels disconnected, separate and situated in different parts of the town, it would not be correct.

**§ 353. Confirming Tax as Extended.**—The supervisors of each town having completed the extension of the tax upon the roll, their acts should be ratified and confirmed by the board. The usual practice is to call the roll of towns, and each supervisor rises and states the result in his roll. The following resolution is generally passed therefor:

*Resolved*, That the taxes as extended upon the assessment-rolls of the several towns and wards, presented to the board by the supervisor thereof, be and the same are hereby confirmed, and that warrants be issued to the collectors of such towns and wards for the collection of the same.

This will make the extensions official. This confirmation is essential.

Methodist Episcopal Church v. Mayor, 20 Hun, 297-8, and cases cited; Bellinger v. Gray, 51 N. Y. 610-621; People v. Hagadorn, 36 Hun, 610.

Except in certain cities in some few cases, the rule to be followed is the above.

**§ 354. Delivery to Collector.**—The boards of supervisors of the several counties in this State shall cause the corrected assessment-roll of each town or ward in their respective counties, or a fair copy thereof, to be delivered to the collector of such town or ward on or before the fifteenth day of December in each year.

2 R. S. 996, § 36.

**§ 355. Warrant to be Annexed; Its Contents.**—To each assessment-roll, so delivered to a collector, a warrant, under the hands and seals of the board of supervisors, or a majority of them, shall be annexed, commanding such collector to collect from the several persons named in the assessment-roll the several sums mentioned in the last column of such roll opposite to their respective names.

If the warrant be directed to the collector of a town, it shall direct the collector, out of the moneys so to be collected, after deducting the compensation to which he may be legally entitled, to pay:

1. To the commissioners of common schools of his town such sum as shall have been raised for the support of common schools therein.

2. To the commissioners of highways of the town such sum as shall have been raised for the support of highways and bridges therein.

3. To the overseers of the poor of the town, if there be no county poor-house, or other place provided in the county for the reception of the poor, such sum as shall have been raised for the support of the poor in such town.

4. To the supervisor of the town all other moneys which shall have been raised therein to defray any other town expenses; and,

5. To the treasurer of the county the residue of the moneys so to be collected.

If the warrant be directed to the collector of a ward, it shall direct the collector to pay all the moneys to be collected, after deducting his compensation, to the treasurer of the county.

In all cases, the warrant shall authorize the collector, in case any person named in the assessment-roll shall refuse or neglect to pay his tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such collector on or before the first day of February then next ensuing.

Id., § 37.

By chapter 377 of the Laws of 1878, as amended by Laws of 1879, chapter 67, it is directed that all moneys raised and collected upon the taxable property of any of the towns of this State, for highway and bridge purposes, shall be paid over by town collectors of taxes to the commissioners of highways of the towns in which said moneys are so raised and collected, and to no other officer or person whatsoever. It shall be the duty of the board of supervisors to issue warrants to the collectors of towns requiring the paying over by them of all moneys raised and collected for highway and bridge purposes to the commissioners of highways of towns; and it shall not be lawful for the board of supervisors of any county to issue warrants to town collectors directing them to pay over any moneys raised and collected upon any town for highway and bridge purposes to the village authorities of any incorporated village, situated wholly or partly in any town. But nothing in this act shall prevent boards of supervisors from raising money under section 2 of chapter 855 of the Laws of 1869, and from issuing warrants to collect the necessary money to repay the same. And said boards of supervisors may appoint a commissioner or commissioners to spend and account for any moneys raised for road or bridge purposes under said chapter 855 of the Laws of 1869, under such regulations as said board shall deem proper.

Section 2 of the act of 1878 requires that the money raised be expended in the town where raised, and section 3 excepts from the operation of the act incorporated villages constituting a separate road district, and special road districts provided for by special act.

**§ 356. Cities.**—Wherever the laws respecting cities shall have directed the moneys assessed for any local purpose to be paid to any person or officer other than those named in the preceding thirty-seventh section, the collector's warrant may be varied accordingly, so as to conform to such alteration.

Id., § 39.

**§ 357. Account to be Transmitted to County Treasurer.**—As soon as the board of supervisors shall have sent or delivered the rolls, with such warrants annexed, to the collectors, they shall transmit to the treasurer of the county an account thereof, stating the names of the several collectors, the amount of money they are respectively to collect, the purposes for which the same are to be collected, and the persons to whom, and the time when the same are to be paid; and the county treasurers, on receiv-

ing such account, shall charge to each collector the sums to be collected by him.

*Id.*, § 38.

See form below.

See Report of Committee on "Ratio and Apportionment," *post*.

### **§ 358. Where Collector Neglects to Qualify.**

— In case the collector of any town in this State shall neglect or refuse to execute his bond as required by law, or the supervisor of the town shall refuse or neglect to appear and file such bond within the time prescribed by law, and if no new collector shall have been appointed within ten days after the time for filing such bond as required by law has expired, the board of supervisors of such county are authorized and empowered to deliver the corrected assessment-roll, or a copy thereof, with a warrant of said board of supervisors, or a majority of them, annexed, to the sheriff of the county, who shall proceed in the collection of said taxes in like manner as collectors are now authorized by law to do, and with the like powers and subject to the same duties and obligations; such warrant shall require all payments therein specified to be made by such sheriff within sixty days after its receipt by him; and the expenses of collection, if any, over and above the fees lawfully chargeable by the collector, to be audited by the board of supervisors, shall be a charge on the town.

Laws of 1857, chap. 585; 2 R. S. 1013.

### **§ 359. Where Collector Refuses to Serve.—**

If any person chosen or appointed to the office of collector of any town or ward in this State shall refuse to serve, or shall die, resign or move out of the town or ward before he shall have entered upon or completed the duties of his office, or shall be disabled from completing the same, by reason of sickness or any other cause, the supervisor and any two justices of such town or ward shall forthwith appoint a collector for the remainder of the year, who shall give the like security and be subject to the like duties and penalties, and have the same powers and compensation, as the collector in whose place he was appointed; and the supervisor shall forthwith give notice of such appointment to the county treasurer. But such appointment shall not exonerate the former collector, or his sureties, from any liability incurred by him or them.

If a warrant shall have been issued by the board of supervisors prior to any appointment under the last section, the original war-

rant, if the same can be obtained, shall be delivered to the collector so appointed, and shall be considered as giving him the same power as if originally issued to himself; but if such warrant cannot be obtained, a new one shall be made out by the clerk of the board of supervisors of the county, which shall be directed to the collector so appointed. And upon every such appointment, the supervisor of the town or ward, if he shall think it necessary, may extend the time limited for the collection of the taxes for a period not exceeding thirty days; of which extension he shall forthwith give notice to the county treasurer.

2 R. S. 1009, §§ 11 and 12.

The board of supervisors cannot amend the roll of any town, after they have *finally* acted on it and issued their warrant to the collector.

People, *ex rel.* Lorillard, v. Supervisors, 15 Barb. 607; People, *ex rel.* Weeks, v. Supervisors Queens Co., 82 N. Y. 275.

The assessment-roll must be completed (the *tax inserted and confirmed* as mentioned, *ante*), before the warrant is annexed thereto.

Bellinger v. Gray, 51 N. Y. 610.

Where a board of supervisors adjourned *sine die*, and delivered to a supervisor the assessment-roll of his town, with *no figures or amounts* in certain columns of the roll (one column being the "*amount of tax*"), *i. e.*, the tax was not "*extended*," but left with him a warrant signed by them annexed to the roll, and the supervisor, after adjournment, inserted the figures and delivered the roll and warrant to the collector, it was held to be illegal and no tax could be collected thereon.

*Id.*; People v. Hagadorn, 36 Hun, 610.

It seems to be the law and is the practice for a seal to be affixed opposite the signature of each supervisor on the warrant,

*Id.*

and that the seal of the board as follows: "Seal, Herkimer County Board of Supervisors," is not sufficient.

*Id.*

The official designation of the one so signing the warrant should be added also,

Sheldon v. Van Buskirk, 2 N. Y. 473,

although a warrant is valid if the said designation is omitted.

*Id.*

The omission of the dollar mark "\$" does not render the warrant irregular or invalid.

Jones v. Chamberlain, 21 Dig. 537; American Tool Co. v. Smith, 14 Abb. N. C. 378.

It should *always appear*, or the column heading *specify, what it represents*. "In most of the other States such an omission is *fatal*."

Wely Law Assessments, § 225 and notes.

Moneys for the poor and highway purposes should be paid over to the proper officer, *not to the supervisor*. The warrant should so direct.

People v. Pennock, 60 N. Y. 421.



In towns bonded for certain railroad companies, the tax collected in such towns for the purpose of making payments upon the bonds goes to the railroad commissioners.

People, *ex rel.* Martin, v. Brown, 55 N. Y. 180.

A delay in delivering the warrant until after December 15th does not invalidate the warrant.

Bradley v. Ward, 53 N. Y. 401.

## § 359½. Collector's Warrant — Town Collector.

STATE OF NEW YORK, }  
COUNTY OF ONEIDA, } ss.:

THE PEOPLE OF THE STATE OF NEW YORK:

To JOHN DOE,

COLLECTOR OF THE TOWN OF CAMDEN, IN SAID COUNTY, GREETING:

You are hereby required and commanded to collect from the several persons named in the assessment-roll, to which this warrant is annexed, the several sums mentioned in the last column thereof, to-wit, the fifth column, and set opposite to the names of such persons respectively, together with your fees thereon.

And for that purpose you are required, immediately after receiving this warrant, to cause notices of the reception thereof to be posted up in five public places in said town, and so located as will be most likely to give notice to the inhabitants thereof; and you are required to designate in such notice one or more convenient places in such town where you will attend from nine o'clock, forenoon, till four o'clock, afternoon, at least three days in each week, for thirty days, which days shall also be specified in such notice, for the purpose of receiving payment of taxes; and you are required to attend accordingly; and any person may pay his taxes to you at the time and place so designated, or at any other time or place, on paying one per cent fees thereon, within thirty days from the first posting of said notices; and you are not allowed to receive over one per cent fees for receiving or collecting any taxes within the said thirty days; but you are entitled to receive one cent fees on every amount of tax under one dollar paid in or collected within said thirty days, except in cases where it is now otherwise provided by law.

And, after the expiration of the said thirty days, you are to proceed and collect the unpaid taxes in the manner provided by the 3d title of the 13th chapter of part 1st of the Revised Statutes, and statutes subsequent thereto; and it will be your duty, for that purpose, to call at least once on each person taxed, or at the place of his usual residence, if in said town, and to demand payment of taxes charged to him on his property; in case any person or persons named in said assessment-roll shall refuse or neglect to pay the tax imposed on him or them, you will levy the same by distress and sale of the goods and chattels of the person or persons, who ought to pay the same, or of any goods and chattels in his or their possession, wheresoever the same may be found within your district; and no claim of property to be made thereto by any other person, shall be available to prevent a sale.

In case any person or persons upon whom any tax is herein assessed shall have removed from the town or ward after such assessment, and before the tax thereon ought by law to be collected; or if any person or persons shall neglect or refuse to pay any tax which is assessed upon any estate situated out of the ward or town in which they shall reside, and within this county, you will levy and collect the tax of the goods and chattels of the person or persons so assessed, which may be found in any ward or town within said county to which such person or persons shall have so removed, or in which they shall reside.

And in every case where the tax shall be received or collected after the expiration of the said thirty days, you are entitled to charge, collect and receive the same fees which are provided by law (independently of the act of May 10, 1845), namely, five per cent fees upon the amount received and collected for tax in each

case; which said fees shall be collected with said unpaid taxes from the several and respective persons named in said tax list

And you are further required and commanded that out of the moneys to be collected by you (exclusive of your compensation for collection, to be received or collected as aforesaid), you do on or before the first day of..... next, pay:

1. To the commissioners of highways in said town, the sum of.....
  2. To the supervisor of the said town, the sum of.....
  3. To the treasurer of the county of Oneida, the sum of.....
- being the whole residue of the sum to be collected by you (exclusive of your fees) as aforesaid. (*See note.*)

In witness whereof, the board of supervisors of said county, in annual meeting assembled, have hereunto set their hands and seals, this..... day of ..... 18 .

A. B.	[L. s.]
C. D.	[L. s.]
E. F.	[L. s.]
G. H.	[L. s.]
J. K.	[L. s.]
L. M.	[L. s.]

(*And so on with each member of the Board of Supervisors.*)

In counties which have no county poor-house or other place provided for the reception of the poor, insert this after 3d above, to-wit: "To the overseer of the poor, the sum of ....."

## Collector's Warrant—Dog Tax.

(*Heading as before.*)

To

COLLECTOR OF THE TOWN OF ....., IN SAID COUNTY, GREETING:

You are hereby required and commanded to collect from the several persons named in the annexed assessment-roll, the sums charged thereto, in the appropriate column thereof, being the taxes imposed by law by the said board upon the said persons, respectively, for taxes upon dogs the current year.

And you are hereby authorized to levy upon any personal property which you may find in the possession of any person or persons so assessed, and to sell the same in like manner as in the case of default in the payment of any tax imposed upon real or personal estate. You will deduct from the amount which you shall collect ten per cent as your compensation or fees for such service; and in case of levy and sale of property for such tax, you will add the same costs thereto which are allowed to constables for similar service.

Any tax which you may return as unpaid for want of goods or chattels upon which seizure or sale thereof could be made, a schedule of such taxes, with the name of the delinquent and the amount of the tax against the said person or persons must be made, to which your affidavit must be attached that you have made diligent efforts to collect the same, and that you have been unable to find any property from which such collection could be enforced.

The omission or refusal to fully discharge any of the duties directed by this warrant will subject you to a penalty of \$10 for every such omission or refusal, to be recovered by the supervisor of your town.

You will return the moneys so collected (less ten per cent for collection) to the supervisor of said town, within the time you are required to make other returns thereto.

The amount upon the roll so payable to said supervisors, is \$ .....

In witness whereof, etc. (as before).

(Signatures and seals as before.)

The above warrant applies to counties acting under Ontario county law.

In other counties acting under the Revised Statutes, the money goes to the county treasurer.

The form can be varied to suit the statute governing the locality.

## MISCELLANEOUS.

**§ 360. Tax for Road-Scraper, Road-Machine, etc.**—The commissioners of highways, whenever they shall think it necessary or useful, may direct and empower any overseer of highways in their respective towns to procure a good and sufficient iron or steel-shod scraper, road-machine, plough, or either of them, for the use of his road district; or such tools, or any of them, may be purchased, owned and cared for, for and on behalf of two or more road districts in any town, jointly by the overseers thereof, whenever they shall be empowered to do so by the commissioners of highways and the town board of such town; each district to pay toward the expense thereof, in proportion to the highway tax assessed therein, or the commissioners may make said purchase for the town at large, such expense to be paid for by a portion of the road tax of such district or town not exceeding one-half thereof in any one year, and which may be required to be paid in money for such purpose and be assessed and levied upon the property of said districts and collected in the same manner as taxes are now so assessed, levied and collected in the town in which such districts are situated, except that the part thereof so required to be paid in money shall be put in a separate column upon the tax-roll, and the board of supervisors of the county in which such town is situated shall cause such sums as shall be certified by said town board to be levied upon the taxable property of said districts.

2 R. S. 1215, as amended by chap. 344, Laws of 1886.

**Noxious Weeds.**

Chapter 49, Laws of 1878, required the owner or occupant of any inclosed or cultivated lands abutting on any highway to cut or destroy the same between June 15 and July 1, and between August 15 and September 1 in each year, but the board of supervisors might prescribe a different period or periods. Section 5, as amended by chapter 291, Laws of 1886, provides.

§ 5. It shall be the duty of the overseer of every road district, and of the street commissioner of every city or village, to see that the provisions of section 1 of this act are enforced, and it is hereby made his duty to give written notice to any occupant of premises to cut all weeds, briars and brush growing within the bounds of the highway, if they shall neglect so to do as above provided; and if, after receiving such notice, the occupant of the premises shall fail to do so within ten days, it shall be the duty of the overseer or street commissioner to employ some one to do so, and when he returns his warrant he shall make return, under oath, of the amount so expended by him, and the ownership and occupancy of the several parcels of land against which such labor was performed. The commissioner or commissioners of highways shall certify these statements to the supervisor of the town, and the supervisor shall lay the same before the board of supervisors at their next meeting, and such board shall include the amounts included in said statements in the taxes assessed upon the lands upon or against which the labor was performed, the same to be collected with the other taxes and paid over, upon the order of the supervisor, to the parties entitled thereto.

§ 2. This act shall take effect immediately.

**§ 361. Board of Supervisors may Extend Time.**—By Laws of 1875, chapter 482, section 1, subdivision 13, boards of supervisors are empowered “to authorize the county treasurer to extend the time for collection of State, county and town taxes in any town or ward, to a period not beyond the first day of April in any year. But no extension shall be permitted in any case until the collector or receiver of taxes of the town, city or ward in which such extension shall be asked, shall pay over to the county treasurer all the taxes collected by him, renew his bond to the supervisor, with such security as the said supervisor shall approve, and furnish evidence by his oath and such other competent testimony as such treasurer shall require, that he has been unable, for cause stated, to collect all the taxes within the time required by his warrant.”

As to power of county treasurer to extend time on all taxes except on non-resident lands, see chapter 32, Laws of 1885, which reads as follows:

**County Treasurer may Extend Time.**—If any collector or receiver of taxes in any town of this State shall pay over all moneys collected by him and shall make his return to the treasurer of his county, as now required by law, of all unpaid taxes on lands of non-residents, and shall renew his bond as herein provided, the said treasurer, upon the written application of the supervisor of said town, shall hereafter be empowered to extend the time for the collection of all other taxes and for making return thereof in his discretion, but not later than the first day of May in each year. Such bond shall be renewed with such sureties as in any town shall be approved by the supervisor thereof, or in case of his absence or inability to act, by the town clerk thereof. The penalty thereof in any case shall be double the amount of taxes in that case remaining uncollected. The bond shall be approved in writing and filed in the same manner as the original bond is required by law to be filed, and to have all the effect of the collector's or receiver's bond. A copy of the bond and the approval thereof shall, before or at the time of making such extension, be delivered to the county treasurer of the county in which said town is; but nothing herein contained shall be construed as extending the time for the payment of the State tax, or any part thereof, by the county treasurer of said county to the comptroller as now provided by law. Receivers of taxes who have filed their bond in accordance with the statutes authorizing the

election of such receivers of taxes shall not be required to renew their bonds.

Chap. 82, Laws of 1885, § 1.

**§ 362. Losses by Certain Officers, on What to be Charged.**—All losses which may be sustained and any deficiencies which may exist by reason of the default of the collector of any town or ward shall be chargeable on such town or ward. All losses which may be sustained and any deficiencies which may exist by the default of the treasurer of any county in the discharge of the duties imposed by law shall be chargeable to such county; and any judgment heretofore obtained or which shall hereafter be obtained against such treasurer for any deficiency on account of the State tax, and where an execution shall have been issued thereon and returned unsatisfied, shall be conclusive as to the fact of such loss or deficiency, and shall thereupon become a charge against such county, and the several boards of supervisors shall add such losses or deficiencies to the next year's taxes of such town or county, and shall proceed to levy the same as other charges against said county or town are levied.

Laws of 1855, chap. 427, § 25, as amended by Laws of 1866, chap. 528; 2 R. S. 1022, § 25.

**§ 363. When Supervisors to Furnish Map.**—Whenever the comptroller, preparatory to a sale of lands for taxes, shall deem it necessary, in order to test the correctness of the descriptions thereof, he may apply to the board of supervisors of any county, for maps of any tracts of land charged with taxes and returned from such county. And the board of supervisors to whom such application shall be made, shall furnish such maps at the expense of the county, if they can be procured, and if not, they shall then furnish such descriptions of the lands as they can obtain, with the statement of the quantity in each subdivision, if the same be divided.

Id., § 43; 2 R. S. 1025.

**§ 364. Suits for Neglect to Pay.**—If any county treasurer shall refuse or neglect to pay the balance due the comptroller within thirty days after notice, a copy of such account is delivered to the attorney-general to prosecute.

The comptroller may also, in his discretion, direct the board of supervisors of the proper county to institute one or more suits on the bond of such treasurer and his sureties.

Id. 1021, §§ 12 and 13.

If the defendants in any suits to be brought under either of the last two preceding sections shall, at any time before judgment is obtained therein, pay the balance due the State, with interest, into the treasury, or account for the same to the comptroller, it shall be his duty, on payment of costs of suit, to direct such suit to be discontinued.

Id., § 14.

**§ 365. Statement of Arrears.**—It shall be the duty of the comptroller, on or before the first Tuesday in October in every year, to furnish the boards of supervisors of the several counties from which returns of arrears of taxes shall have been received at his office, with statements of the sums paid out of the State treasury to their respective county treasurers, on account of such arrears during the year preceding.

Id., § 15.

**§ 366. Rejected Taxes.**—The comptroller shall, on or before the first day of September in each year, transmit by mail or otherwise to each county treasurer a transcript of the taxes of the preceding year assessed in any town or ward in such county which shall have been rejected by him for any cause whatever, stating therein the cause of such rejection.

Id., § 16, as amended by chap. 152, Laws of 1878.

**§ 367. Taxes on Lands Imperfectly Described.**—Whenever the comptroller, after having transmitted such annual transcript, shall discover that any taxes credited to a county in the books of his office are erroneous, or that they have been assessed on lands erroneously described, or so imperfectly described that they cannot, in his opinion, be located with certainty, he shall cancel such taxes on the books of his office, and charge them to the county in which such lands shall lie, with the interest thereon, from the first day of March in the year following that in which the taxes were laid, to the first day of February next after such cancellation.

Id., § 17, as amended by chap. 152, Laws of 1878.

**§ 368. Transcript to be Delivered to Supervisors.**—The comptroller shall also transmit, by mail or otherwise, a transcript of the returns of such taxes, with the addition of such interest, to the proper county treasurer, who shall deliver the same to the supervisor of the town or ward in which such taxes were assessed, by whom it shall be delivered to the board of supervisors at their

next meeting. If the town or ward in which such taxes were originally assessed shall have been divided since such assessment, the county treasurer shall deliver such transcript to the board of supervisors at their next meeting.

Id., § 18, as amended by chapter 152, Laws of 1878.

**§ 369. Description of Land to be Made.**—Whenever the comptroller shall have rejected any tax, in the first instance, or have canceled and charged the same to a county to which it had previously been credited, the supervisor of the town or ward in which such lands are situate shall, if in his power, add to the assessment-roll of such town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands; and the correct amount of taxes thereon, stating the tax of each year, and each kind of tax, separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall have been required by him; and if necessary he may cause a map and survey of each lot or parcel returned for more perfect description to be made, and the expense of such survey and map shall be a charge upon such land to be added to the tax thereon; and the board of supervisors shall direct the collection of such taxes and expenses so added to such assessment-roll, and they shall, for all the purposes of this act, be considered as the taxes of the year in which the description shall be perfected. If the supervisor of such town or ward shall not have fully complied with the requirements of this section, the comptroller shall not thereafter admit, but shall reject all such re-assessed, canceled or rejected taxes as may be returned to him.

Id., § 19, as amended by chap. 152, Laws of 1878.

**§ 370. If not Made, Tax Assessed upon Towns.**—If the correct amount of such taxes, and an accurate description of such lands shall not have been added by such supervisor to the assessment-roll of his town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, the board of supervisors shall cause such arrears of taxes, and the interest thereon, to be levied on the valuations of the estates, real and personal, of the town or ward in which such taxes were originally assessed, and shall direct the same to be collected with the other taxes of the same year.

Id., § 20, as amended by chap. 152, Laws of 1878.

**§ 371. How Assessed in Case of Division of Town.**—If the town or ward in which such taxes were originally

assessed shall have been divided since such assessment, then such taxes and interest shall be apportioned by the board of supervisors among the towns and wards included in the limits of such original towns or wards, in such equitable manner as they may deem proper.

Id., § 21, as amended by chap. 152, Laws of 1878. 2 R. S. 1022.

**§ 372. Tax, When Canceled.**—Whenever it shall be made to appear to the comptroller that any tax returned as unpaid was, previously to such return, paid to the collector or county treasurer, the comptroller shall cancel such tax on the books of his office; and if the same shall have been also paid into the State treasury he shall cause it to be repaid out of the treasury to the person by whom such payment shall have been made.

Whenever any unpaid tax, levied upon an assessment of land by a town or ward having a legal right to assess the same, which may have been returned to and admitted by the comptroller, shall be ascertained, either before or after sale therefor, to be illegal or void by reason of any irregularity, or defect in, or omission of, statutory requirements for creating or collecting such tax, the comptroller is hereby empowered and directed, whenever deemed practicable by him, to re-levy the correct amount of such tax and add thereto the five per cent allowed by law to be added by the collector, which aggregate amount of tax and charge, with interest thereon at ten per cent per annum, from the first day of August following the admission of such illegal or void tax, shall thereupon be due and payable, and shall be subject to existing provisions of law governing the collection of and sale for unpaid taxes by the comptroller; but no tax arising from a double assessment, the taxes levied on one of which shall be satisfactorily proven to the comptroller to have been duly paid, shall be subject to such re-levy. Such re-levy of any invalid or defective tax shall be conclusive evidence of its regularity and legality, and any such tax, so re-levied, shall be treated and subject to payment as though such sale had not been made, and if allowed to remain unpaid, the land shall be sold therefor.

Id., § 22, as amended by chap. 453, Laws of 1885.

**§ 373. Account to be Transmitted to Supervisors.**—Whenever any tax shall be so canceled by the comptroller, he shall transmit an account thereof to the treasurer of the proper county, who shall cause the same to be laid before the board of supervisors thereof, and the amount of such tax with the interest shall be collected by them of the collector or county treasurer who



made such erroneous returns, and be paid into the treasury of this State.

Id., § 23.

**§ 374. Comptroller may Require Correct Returns.**—If, in consequence of having received irregular and imperfect descriptions of the lands of non-residents in any town, the comptroller shall apprehend that irregular or imperfect returns may again be received, he may give notice of such apprehension to the board of supervisors of the proper county at their annual meeting, specifying the several towns in such county the returns from which will probably require correction.

2 R. S. 1049, § 7.

**§ 375. Duty of Supervisors Thereupon.**—It shall be the duty of such board of supervisors to require the assessors and the collector of such town specified in the notice of the comptroller, to meet in such town at such place as shall be designated by the supervisors, within thirty days of the expiration of the time when the collectors are to make their returns to the county treasurers.

2 R. S. 1050, § 8.

**§ 376. Where Sales are Invalid, Tax to be Re-assessed.**—Whenever the comptroller shall discover, prior to the conveyance of any lands sold for taxes, that the sale was for any cause whatever invalid or ineffectual to give title to the lands sold, the lands so improperly sold shall not be conveyed, but the comptroller shall cancel the sale, and forthwith cause the purchase-money and interest thereon to be refunded out of the State treasury to the purchaser, his representatives or assigns.

Laws of 1855, chap. 427, § 83; 2 R. S. 1082, § 83.

If the error originated with the county or town officers the sum so paid shall be a charge against the county from which the tax was returned; and the board of supervisors shall cause the same to be assessed, levied, collected and paid to the treasurer of this State.

Id., § 84.

If the discovery that the sale was invalid shall not be made until after the conveyance shall have been executed for the lands sold, it shall be the duty of the comptroller, on receiving evidence thereof, to cancel the sale, to refund out of the State treasury to the purchaser, his representatives or assigns, the purchase-money and interest thereon, and to re-charge the county from which the tax was returned, with the amount of purchase-money, and interest at the rate of seven

per cent from the time of the sale, and such county shall cause the same to be levied and paid as provided in the last preceding section.

Id., § 85.

**§ 377. Purchase of Lands Sold for Benefit of County.** — It shall be the duty of the comptroller at any tax sale held by him to bid in for the State all lands liable to sale thereat then belonging to the State, or that are then mortgaged to the commissioners for loaning certain moneys of the United States ; and to bid in for each of the counties of the State all other lands liable to be sold thereat, then belonging to said counties, respectively, and also all lands which may have been bid in by or for said counties, respectively, at any tax sale which has not been canceled, or from which said lands may not have been duly redeemed, and to reject any and all other bids which may be made for any or all of said lands.

Laws of 1855, chap. 427, as amended by Laws of 1881, chap. 402, § 66, subd. 1 ; 2 R. S. 1029.

It shall further be the duty of the comptroller, at any such sale, to bid in for each of the counties of Cattaraugus, Chautauqua, Monroe, Oswego, Suffolk and Sullivan, and for all other counties for which there may at the time be special laws authorizing and directing the treasurer thereof to sell "lands of non-residents" for unpaid taxes thereon, and by and under the provisions of which such taxes are not to be returned to the comptroller, respectively, every lot of land in each of said counties, respectively, liable to be sold at said sale, for which no person shall offer to bid, and to bid in for the State every other lot of land liable to be sold at said sale for which no person shall so offer to bid.

Id., subd. 2. See, also, chap. 464, Laws of 1883.

**§ 378. Certificates of Sale of Lands Bid in. Duties of Comptroller and County Treasurers.** — Certificates of sale for all lands bid in by the comptroller under the provisions of subdivisions 1 and 2 of this section shall be made by the comptroller, which shall describe the lands purchased and specify the time when a deed therefor can be obtained. Such purchases shall be subject to the same right of redemption as purchases by individuals ; and if the lands so sold shall not be redeemed, the comptroller's deed therefor shall have the same effect, and become absolute in the same time, and on the performance of the like conditions as in the case of sales and conveyances to individuals.

Id., subd. 3.

The comptroller shall charge to each county, respectively, on the books of his office, the amount for which it may be liable, by reason of any and all purchases made in accordance with the preceding provisions of this section. Such amount shall become due on the last day of each tax sale, respectively, and shall be payable in the same manner as the State tax is now required by law to be paid.

Id., subd. 4.

The comptroller shall, as soon as practicable after each tax sale, transmit the certificates of sale for said lands to the treasurer of each of said counties, respectively, on receipt of which, said treasurer shall enter the same, in their proper order, in a book to be provided by him for such purpose, and shall have, unless otherwise directed by the board of supervisors of his county, full power and authority, until the expiration of two years from the last day of said sale, to sell and assign any or all of said certificates for any land not at the time owned by his county, on payment therefor, into the county treasury, of the amount for which the land described thereon was sold at the said sale, with interest thereon from the date of such tax sale to the date of such sale and assignment by him. Any such sale and assignment shall be duly and fully entered by such county treasurer in the book aforesaid, which book shall be a part of the records of the county.

Id., subd. 5.

**§ 379. Deed to and Vesting of Title in Supervisors.** — In case said tax sale certificate or certificates shall not have been sold or assigned by the respective county treasurers on or before the expiration of two years from the last day of said sale, each of said county treasurers shall then transmit such unsold certificate or certificates to the comptroller, who shall issue to the board of supervisors of each county, respectively, a deed or deeds for all the lands described thereon, then remaining unredeemed, or the sale of which has not been canceled. The title thus acquired by the boards of supervisors shall be held by them in trust for their respective counties, and may be disposed of by them at such times and on such terms as shall be determined on by a majority of such board at any regular or special meeting thereof.

Id., subd. 6.

**§ 380.** The subject of rejected taxes occasions much trouble and annoyance, both to the State and county officers. The account with the comptroller is seldom closed, and year after year, the same diffi-

culty continues. The best solution of the question yet submitted is the law in practice in Oneida county and since introduced into Cayuga, Chenango, Jefferson, Onondaga, Orleans, Oswego and Ulster. It was written by Mr. J. B. Cushman, of Utica, N. Y., one of the oldest members of the board of supervisors of Oneida county. It works satisfactorily, thoroughly and well, and deserves the commendation it has received. The account with the comptroller, as to Oneida county, is closed. All taxes levied are collected, not later than August of the next year thereafter, and the "committee on rejected taxes" is abolished; there is no duty for them to do.

The statute that did the work is as follows:

Laws of 1880, chap. 91, as amended by chap. 8, Laws of 1881.

AN ACT to enforce the collection of taxes levied in the county of Oneida.

SECTION 1. It shall not be the duty of the county treasurer of the county of Oneida to transmit to the comptroller any amount of unpaid taxes assessed upon corporations, or upon lands of non-residents, or of unknown owners in said county, or any treasurer's or collector's affidavit in relation thereto. Nor shall the comptroller credit the said county treasurer with any unpaid taxes on lands or corporations whether assessed to residents or as non-resident land, but the whole amount of any State tax unpaid on property in the said county shall be paid by the county treasurer to the treasurer of the State, on or before the first day of May after the same shall have been assessed upon the real and personal estate of the said county.

§ 2. If there are not sufficient funds then in the county treasury unappropriated to pay such State tax, the county treasurer shall make provision for the payment of the same by temporary loans upon the credit of the county, and charge the same to the cities and towns in such amounts as they may respectively be deficient.

§ 3. The county treasurer shall examine the accounts of arrears of taxes received from the collectors of the several towns and wards, and shall reject all taxes on lands that shall be imperfectly described, and all taxes so erroneously assessed in form or in substance that the collection of the same cannot be enforced; and shall, within twenty days, deliver a transcript thereof to the supervisors of the several towns and wards in which the property so rejected shall be located, and said supervisors shall, within thirty days thereafter, cause a correct description of the lands so imperfectly described to be made and returned to said treasurer. The amount of taxes, fees and interest thereon as herein provided, upon any lands rejected by the treasurer and returned to the respective supervisors, the proper descriptions of which shall not be furnished on or before the first day of June annually, shall be charged to the town or city where the same exists, and the board of supervisors, at its next succeeding annual session, shall levy the amount thereof upon such town or cities as deficiencies therein.

§ 4. No commission shall be allowed by the county treasurer upon taxes returned to him uncollected by the collectors in the several towns and wards, but such treasurer may add five per cent to the amount thereof, to be retained by him as compensation for services imposed by this act.

§ 5. Whenever any tax charged on real estate returned to the county treasurer, and the interest at the rate of twelve per cent per annum to be computed from the first day of March, when such tax was payable, together with the fees thereon, shall remain unpaid for four months succeeding the said first of March, the county treasurer shall proceed to advertise and sell such real estate in the manner herein provided for the payment of such tax, fees and interest, and the expenses of procuring description, publishing notices, and of conducting the sale, which shall be a charge on the lands sold, and shall be added to the other charges thereon. Should any errors be discovered in the description of the land so assessed and taxed, the said treasurer may correct the same at any time previous to the sale. In the event that the same land shall be twice assessed and taxed, and the taxes

thereon once paid, the treasurer shall return one of such amounts to the board of supervisors, who shall provide for the deficiency arising therefrom.

§ 6. The said county treasurer shall, immediately after the expiration of the aforesaid four months, cause to be published once each week in two daily newspapers of the city of Utica, and in two weekly papers of the city of Rome, for six weeks, a list or statement of the real estate charged with such tax, fees and interest, and so liable to be sold; and also a notice that the said real estate will, on a day at the expiration of said six weeks to be specified in such notice and the succeeding days, be sold at public auction at the court-houses in said county to discharge the taxes, fees, interest and expenses aforesaid, which may be due thereon at the time of sale. The sale of such lands so assessed in the towns of Annsville, Ava, Camden, Florence, Floyd, Lee, Vernon, Verona, Vienna, Western, Westmoreland and the city of Rome shall be held at the court-house in the city of Rome; and the sale of all such lands for the residue of the county shall be held at the court-house in the city of Utica. On the day mentioned in the said notice, the county treasurer shall commence the sale of such real estate, and he shall continue the sale from day to day until such parcels shall be disposed of. In case no bid to the extent of the tax and charges thereon shall be received for any piece or lot of land so offered, the said treasurer may purchase the same for, and in behalf of the county of Oneida, and he may subsequently transfer the certificate of the same to any person who will pay the amount chargeable thereon.

All lands purchased by the treasurer, for and in behalf of the county, the certificates of which are not sold and assigned within one year subsequent to the last day of such annual sale, shall, with the interest thereon, be charged to the respective towns and cities, the amounts thereof levied upon the taxable property therein, and said certificates assigned to such towns and cities. If such certificates shall not be sold or redeemed subsequent to such assignment, such towns or cities shall be entitled to a deed therefor, which shall have the same effect and become absolute in the same manner, on the performance of like conditions, as in the case of sales to individuals. The charge for publishing the notices provided in this section, to be mutually agreed upon, shall not exceed two dollars to each newspaper for publishing the description of each piece of land contained in said notices. If the daily papers shall decline to so publish the same, the treasurer may cause such notices to be published in any other newspapers published in said city.

§ 7. The purchasers at such sales shall pay the amount of their respective bids to the county treasurer within forty-eight hours after the sale; and after such payment shall have been made, the said treasurer shall give to the purchaser of any such real estate a certificate describing the real estate purchased and the sum paid, and such purchaser or his legal representatives or assigns may, immediately upon receiving said certificate, by virtue thereof, and of this act, lawfully possess, hold and enjoy for his and their own proper use, and for the use and benefit of his and their heirs and assigns forever, the real estate described in said certificate, unless redeemed as hereinafter provided; and he may, at any time after the time limited in the eighth section of this act, for the redemption of such premises, shall have expired and said premises shall not have been redeemed as therein provided, cause the occupant of such real estate to be removed therefrom, and the possession thereof to be delivered to him in the same manner and by the same proceedings, by and before the same officers, as in the case of a tenant holding over after the expiration of his term without permission of his landlord.

§ 8. The owner of, or any person interested in, any real estate sold for taxes as aforesaid, may redeem the same at any time within one year after the last day of such sale, by paying to the said county treasurer, for the use of the purchaser, his heirs and assigns, the sum mentioned in his certificate and the interest thereon at the rate of twelve per cent per annum, to be computed from the date of such certificate.

§ 9. If such real estate sold for taxes, or any portion thereof, be not redeemed as herein provided, the said treasurer shall execute to the purchaser, his heirs or assigns, a conveyance of the real estate so sold which shall vest in the grantee an absolute estate in fee. The said treasurer shall be entitled to demand and receive from the purchaser one dollar for preparing such conveyance.

§ 10. Every such conveyance shall be executed by the treasurer of said county of Oneida under his hand and seal, and the execution thereof shall be acknowledged before a proper officer in the same manner as other conveyances of real

estate are executed and acknowledged under the laws of the State, and such conveyance shall be conclusive evidence that the sale was regular, and also presumptive evidence that all the previous proceedings were regular according to the provisions of this act.

§ 11. Whenever any purchaser under such sale shall be unable to recover possession of the real estate sold to him, by reason of any error or irregularity in the assessment of any person or property, or in the levying of a tax, or in any proceedings for the collection of any tax, the board of supervisors of said county shall reimburse the purchase-money and expenses so paid with interest, the same to be presented and audited as other county charges, and by them to be charged to and levied upon the cities or the town where the irregularity arises.

§ 12. All powers which are conferred upon the comptroller of this State in relation to the cancellation of a tax which shall have been paid to a collector; the repayment of any tax paid more than once; the payment of a part of the tax on land by any person claiming a part of such land; the redemption of land sold for taxes by persons claiming an undivided share, or a specified part thereof; the effect of such redemption reducing the land to be conveyed; the effect of any such sale of land for taxes upon the lien of any mortgage thereon; the right of a mortgagee to redeem; the consequence of neglect to do so after notice, and the lien of the mortgagee for the amount paid on such redemption; the authority to withhold conveyances when it shall be discovered that any sale of land for taxes was ineffectual to convey a title, and to refund the purchase-money and interest to the purchaser are hereby conferred, so far as relates to the county of Oneida, upon the treasurer thereof.

§ 13. In every case where the collectors of the towns and wards in said county shall have been discharged from liability on account of any uncollected taxes returned by them to the said treasurer, the county treasurer may maintain an action for the recovery of the amount so remaining unpaid and uncollected, with interest at the rate of twelve per cent per annum, to be computed from the first day of March when the said tax was payable, in his name of office, against the person, firm or corporation liable for such tax, or the representative of such person, firm or corporation, in any court of competent jurisdiction, in which the proceedings, costs, judgments and executions shall be the same, and with like effect, as in actions between other public officers and individuals; and the amount collected shall be applied in the same manner as if paid to the county treasurer by the collectors of said towns and wards. Nothing in this section contained shall be construed to repeal or abridge any powers now had by officers for the collection of taxes in said towns and wards.

§ 14. All acts and parts of acts inconsistent or in conflict with this act, so far as the same do conflict, and relating to the county of Oneida, are hereby repealed.

§ 15. When any lot or piece of land sold for taxes by the treasurer shall, after the expiration of six months from the last day of the annual sale therefor, be in the actual occupation of any person as a residence, the purchaser, or the person claiming under him, shall serve a written or printed notice on such occupant, or by leaving such notice at the dwelling thereof with some person of suitable age, or by affixing such notice upon the outer door of such dwelling, or if such land shall not be occupied as aforesaid, such notice shall be published in one of the newspapers in the city of Rome or the city of Utica, once each week for three weeks; stating in substance the sale of such lands, the person to whom made, and the amount for which the same was sold, and stating the time when the purchaser thereof will be entitled to receive a deed, and stating also that unless the said amount and the interest thereon is paid to the county treasurer within one year from the last day of such annual sale, the same will become absolute, and the owner or other persons interested in said lands will be forever barred from all right or title thereto, and no other notice, either by the county treasurer or by the holder of the certificate of any sale, or by any other person, shall be necessary or required. In case any of the lands so sold shall be redeemed therefrom subsequent to service of notice, the expenses of advertising and service of the notice herein provided, and any taxes upon lands so sold which may be assessed upon and paid by the purchasers, or assignees of such purchasers between the time of the sale and redemption thereof, shall, with the interest thereon at the rate provided by this act, be added to the amount otherwise required to be paid for such redemption. This section shall apply to the sales made by the treasurer of said county in the year eighteen hundred and eighty.

§ 16. Such notice with the proof of the service thereof shall be exhibited to said treasurer previous to his issuing the deed of the premises so described, and the proof of the service of such notice shall be recorded with such conveyance.

§ 17. The county treasurer shall not issue deeds to persons entitled thereto, until at least thirty days subsequent to the service of notice herein provided.

§ 18. This act shall take effect immediately, in all respects except so far as it relates to the compensation of the county treasurer, and in this respect it shall take effect upon the expiration of the term for which the present county treasurer is elected.

§ 6 (of said chapter 8). This act shall take effect immediately.

**§ 381. Proceedings by Supervisor in case Collector Neglects to Pay Over Moneys.**—If any collector shall refuse or neglect to pay to the several town officers of his town, or to the county treasurer, the sums required by his warrant to be paid to them respectively, or either of them, or to account for the same as unpaid, the county treasurer shall, within twenty days after the time when such payments ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid and unaccounted for by such collector, of the goods and chattels, lands and tenements of such collector, and to pay the same to the county treasurer, and return such warrant within forty days after the date thereof, which warrant the county treasurer shall immediately deliver to the sheriff of the county; but no such warrant shall be issued by the county treasurer for the collection of moneys payable to town officers without proof, by the oath of such town officers, of the refusal or neglect of the collector to pay the same, or account therefor as above provided.

2 R. S. 1010, § 13.

The sheriff is to proceed to levy and collect the amount from the collector, but if he fail to collect any part thereof he is to so return to the county treasurer, who is forthwith to give notice to the supervisor of the town or ward of the amount due from the collector.

Id., § 14 and 15.

The supervisor shall forthwith cause the bond of such collector to be put in suit, and shall be entitled to recover thereon the sum due from such collector, with costs of suit; and the moneys recovered shall be applied and paid by the supervisor in the same manner in which it was the duty of the collector to have applied and paid the same.

Id., § 16.

## COUNTY TREASURER.

**§ 382. Certificate of Unpaid Taxes.**—Whenever any county treasurer shall receive from a collector an account of unpaid taxes assessed on lands of non-residents, such county treasurer shall compare the same with the original assessment-roll, to which the collector's warrant is attached, which rolls the collectors are required in all cases to return and deposit with their respective county treasurers; and if he finds it to be a true transcript thereof, he shall add to it a certificate showing that he has examined and compared the account with said roll, and found the same to be correct; and after crediting the collector with the amount shall, before the first day of April next ensuing, transmit the account and the collector's affidavit to the comptroller, with a certificate that he has compared the account with the entries of the same taxes in the original assessment-roll, to which the collector's warrant is attached, and has found the same to be a true transcript of such roll. The comptroller may, before admitting any taxes therein, return such accounts to the respective county treasurers for correction or completion, which must be returned to him within one month thereafter, or as the comptroller may otherwise direct and such account when accepted by the comptroller, shall be deemed conclusive evidence of the regularity and validity of all taxes therein, which may be admitted by him and of all prior proceedings in assessing the lands and levying and collecting such taxes, except in cases where it shall be satisfactorily proven to the comptroller that any such tax was duly paid in the county, or was levied on an assessment of land by a town or ward having no legal right to assess the same, or arose from a double assessment, the taxes levied on one of which were duly paid.

Laws of 1855, chap. 427, § 4; 2 R. S. 1019, § 4, as amended by Laws 1885, chap. 453.

**§ 383. Apportionment of State Tax.**—The comptroller shall, from the annual returns made to him of the valuations of real and personal estates in the several counties in this State, charge the several county treasurers with the amount of the State taxes, if any, to be raised in their respective counties, crediting them with their own fees; but no fees shall be allowed by the comptroller to the county treasurers, in adjusting the accounts of the county treasurers, for such portion of the State tax as is paid by credit given for taxes on non-resident property returned to him.

Id., § 8.



**§ 384. Lands Imperfectly Described.**—Whenever any account of arrears of taxes on the lands of non-residents shall be received by the comptroller from a county treasurer, he shall examine such account and reject all taxes entered thereon that shall be found to be erroneous, and all taxes found thereon charged on lands erroneously or imperfectly described, and shall credit such county treasurer, in a book to be kept by him for that purpose, with the amount of all arrears of taxes which shall be admitted by him.

Id., § 9, as amended by chap. 152, Laws of 1878.

**§ 385. Arrears, how Paid.**—If the arrears so credited to the treasurer of any county shall exceed the State tax, if any, in said county, the comptroller shall cause the surplus, after deducting therefrom any balance which may be due from such county on account of taxes previously rejected by the comptroller, to be paid out of the treasury of this State to the treasurer of the county; and the whole amount of taxes so to be assumed by the State shall be collected for its benefit in the manner hereinafter provided. If there be no State tax, the whole amount of such arrears, after deducting such balance as above mentioned, shall be paid to the county treasurer.

Id., § 10.

**§ 386. Accounts with County Treasurer.**—The comptroller shall state the accounts of the several county treasurers, on the first day of May in every year; and whenever any part of a State tax shall appear to be unpaid by any county treasurer, the comptroller shall transmit by mail to such county treasurer a copy of his account, requiring him to pay the balance within thirty days.

Id., § 11.

**§ 387. Suits for Neglect to Pay.**—If any county treasurer shall refuse or neglect to pay such balance within such time, the comptroller shall forthwith (unless he shall be satisfied by due proof that such treasurer has not received such balance, and has taken all proper steps to collect the same), deliver a copy of such county treasurer's account to the attorney-general, who shall prosecute forthwith; and the State shall be entitled to recover the balance due with interest thereon from the first day of May in the year when the same ought to have been paid.

Id., § 12.

**§ 387½. Unpaid School Taxes, how Collected.**—If any tax on real estate placed upon the tax list and duly deliv-

ered to the collector, or the taxes upon non-resident stockholders in banking associations organized under the laws of congress, shall be unpaid at the time the collector is required by law to return his warrant, he shall deliver to the trustees of the district an account of the taxes remaining due, containing a description of the lands upon which such taxes were unpaid, as the same were placed upon the tax list, together with the amount of the tax so assessed, and upon making oath before any justice of the peace or judge of court of record, that the taxes mentioned in any such account remain unpaid, and that after diligent efforts he has been unable to collect the same, he shall be credited by said trustees with the amount thereof.

Laws of 1864, chap. 555, tit. 7, § 75, as amended by chap. 250, Laws of 1883; 2 R. S. 1172.

Upon receiving any such account from the collector, the trustees shall compare it with the original tax list and if they find it to be a true transcript, they shall add to such account their certificate to the effect that they have compared it with the original tax list and found it to be correct, and shall immediately transmit the account, affidavit and certificate to the treasurer of the county.

Id., § 76.

Out of any moneys in the county treasury raised for contingent expenses the treasurer shall pay to the trustees the amount of the taxes so returned as unpaid, and if there are no moneys in the treasury applicable to such purpose, the board of supervisors, at the time of levying said unpaid taxes as provided in the next section, shall pay to the trustees of the school district the amount thereof by voucher or draft on the county treasurer in the same manner as other county charges are paid.

Id., § 77, as amended by Laws of 1880, chap. 455.

Such account, affidavit and certificate shall be laid by the county treasurer before the board of supervisors of the county, who shall cause the amount of such unpaid taxes, with seven per cent of the amount in addition thereto, to be levied upon the lands on which the same were imposed; and if imposed upon the lands of any incorporated company, then upon such company; and when collected the same shall be returned to the county treasurer to reimburse the amount so advanced, with the expenses of collection; and if imposed upon the stock of a non-resident stockholder in a banking association organized under the laws of congress, then the same with seven per cent of the amount in addition thereto, shall be a lien upon any dividends thereafter declared upon such stock, and upon no-

tice by the board of supervisors to the president and directors of such bank of such charge upon such stock, the president and directors shall thereafter withhold the amount so stated from any future dividends upon such stock, and shall pay the same to the collector of the town duly authorized to receive the same.

Id., § 78, as amended by chap. 250, Laws of 1888; id.

Any person whose lands are included in any such account may pay the tax assessed thereon to the county treasurer at any time before the board of supervisors shall have directed the same to be levied.

Id., § 79.

**§ 387¾. Highway Labor not Worked.**—Every overseer of highways shall, on or before the first day of October in each year, make out and deliver to the supervisor of his town a list of all resident landholders residing in his district who have not worked out their highway assessment, or commuted for the same, with the number of days not worked or commuted for by each resident of his district, charging for each day in such list at the rate of \$1.50 per day; and also a list of all lands of non-residents, and of persons unknown, which were assessed on his warrant by the commissioners of highways, or added by him according to law, on which the labor assessed has not been performed or commuted for, and the number of days' labor unpaid by each, charging for the same at the rate of \$1.50 per day; which list shall be accompanied by the affidavit of the overseer, duly certified that he has given the notice required by the thirty-second, thirty-third and thirty-fourth sections of this title, and that the labor for which such residents and such land is returned has not been performed or commuted.

2 R. S. 1233, § 47, as amended by Laws of 1868, chap. 791; Laws of 1870, chap. 461.

It shall be the duty of the supervisors of the several towns to receive the lists of the overseers of highways when delivered pursuant to the preceding forty-seventh section, and to lay the same before the board of supervisors of the county.

Id., § 49.

It shall be the duty of each board of supervisors, at their annual meeting in each year, to cause the amount of such arrearages for highway labor returned to them severally, as provided in the preceding section, estimating each day's labor at \$1.50 a day, to be levied and collected from the real or personal estate of the person, corporation, or non-resident real estate from which said arrearages

of highway labor may remain unpaid, and to be collected in the same manner that the other taxes are collected, and order the same, when collected by said collector, to be paid over to the commissioners of highways of the town wherein the same is collected, to be by them applied toward the construction, repair and improvement of the roads and bridges in the district in which the labor was originally assessed.

Id., § 50, as amended by Laws of 1877, chap. 197.

## Form of Overseer's Return.

TO THE SUPERVISOR OF THE TOWN OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_ :

The following is a list of all the resident landholders residing in district No. \_\_\_\_\_, in the town of \_\_\_\_\_, \_\_\_\_\_ county, who have not worked out their highway assessment, or commuted for the same, with the number of days not worked or commuted for by each, at \$1.50 per day; and also a list of all the lands of non-residents, and of persons unknown, which were assessed on my warrant by the commissioner of highways of said town, or added by me according to law, on which the labor assessed as aforesaid has not been performed or commuted for, and the number of days' labor unpaid by each, charging for the same at the rate of \$1.50 per day.

(Here insert as in an assessment-roll.)

(See ante, "Assessment-roll.")

(Signed)

A. B.

Dated October 1, 188 .

COUNTY OF \_\_\_\_\_, }  
TOWN OF \_\_\_\_\_, } ss.:

A. B., being duly sworn, says that he is the overseer of highways of road district No. \_\_\_\_\_, in said town; that he has given the notices required by the 32d, 33d and 34th sections of title 1, article 3, chapter 16, part 1 of the Revised Statutes, and that the labor for which such residents and land above mentioned are returned, has not been performed or commuted.

(Signed)

A. B.

Sworn to before me, this \_\_\_\_\_ day }  
of \_\_\_\_\_, 188 . }  
JUSTICE OF THE PEACE. }

The same rules as to inserting on the assessment-roll apply in these cases as in others — residents may be named, etc. — non-residents must not be.

Colman v. Shuttuck, 2 Hun, 497 · affirmed, 62 N. Y. 348.

## CHAPTER VI.

### CORPORATIONS — ASSESSMENT AND TAXATION OF.

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| <p>SEC. 388. Assessment and taxation of.<br/>         389. Real estate of corporations.<br/>         390. Railroad — Real estate.<br/>         391. Foreign railroads.<br/>         392. Railroad — Personal property.<br/>         393. Foreign railroads — Personal property.<br/>         394. Telegraph and telephone lines.<br/>         395. Plankroads and turnpikes.<br/>         396. Pipe-line companies.<br/>         397. Toll bridges.<br/>         398. Apportionment for school districts.<br/>         399. Corporations — Where assessed.<br/>         400. Corporations — Personal property.<br/>         401. Officers to deliver statements to assessors.</p> | <p>SEC. 402. What is liable to taxation thereunder.<br/>         403. Banks -- Shares in -- Personal estate -- How taxed.<br/>         404. Non-resident stockholders.<br/>         405. Banks to retain dividends.<br/>         406. Savings banks.<br/>         407. Insurance companies.<br/>         408. Co-operative or assessment insurance or casualty companies.<br/>         409. Fire and marine insurance.<br/>         410. State tax on franchise, etc.<br/>         411. Application for reduction.<br/>         412. Exemption.<br/>         413. Duty of board of supervisors as to incorporated companies.</p> |
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§ 388. **Assessment and Taxation of.**—The law relating to the assessment of corporations is in a very complicated condition. The following rules will, so far as the duties of the supervisors are concerned, furnish them with the necessary information.

§ 389. **Real Estate of Corporations.**—The real estate of *all* incorporated companies is liable to taxation in the town or ward in which the same is situated, in the same manner as the real estate of individuals.

2 R. S. 990.

§ 390. **Railroad, Real Estate.**—The real estate of railroad companies is to be assessed in the town or ward where the same is located.

Id.

All real estate owned, possessed or appropriated by railroad companies is to be assessed.

People v. Erie R. R. Co., 52 Barb. 105.

A railroad should be regarded as a *resident* of the various towns and wards through which its road extends, and assessed therein for its real estate the same as taxable inhabitants, and *not* as "*non-resident* lands."

People v. Fredericks, 48 Barb. 173; People, *ex rel.* Dunkirk & F. R. R., v. Cassity *et al.*, 46 N. Y. 46; Buffalo & State Line R. R. v. Bd. of Suprs. of Erie Co., 48 id. 93.

The real estate of railroad corporations should be assessed at its value for the purposes to which it has been adapted, and not as mere farming lands; and in

estimating the same, the assessors are not bound to consider it as mere land and superstructure isolated in their town from the other parts of the road. They are entitled to estimate the value of that part of the real estate within their jurisdiction which contributes to make up a complete and useful railroad, extending beyond the town they represent.

*People v. Fredericks*, 48 Barb. 173.

The assessors, in estimating the value of railroad property within the town, are not to be governed solely by its cost, but rather, though not exclusively, by its productiveness for railroad purposes, the sum it would sell for at a fair, free and well advertised sale.

*People, ex rel. Ogdensburgh & L. C. R. R., v. Pond*, 13 Abb. N. C. 1; *People, ex rel. Citizens' Gas-light Co., v. Assessors*, 39 N. Y. 81.

The taxable value of a railroad should not be determined alone by the long, narrow strip of land for farming or any other purpose, except its use for the bed of a railroad. Nor should the portion of a railroad situated in a particular town be estimated by the cost of any expensive rock cut, or quicksand filled, or a long tunnel located in that town. It should be valued as a part of a whole, a continuous way to carry passengers and freight from one commercial business point to another and the profits of its use for that purpose.

*People, ex rel. Ogdensburgh & L. C. R. R., v. Pond*, 13 Abb. N. C. 1, and cases cited.

The consideration of profits should have a large if not controlling influence upon the value of almost every thing, except when considerations of taste or pleasure or comfort are involved. A thing to be worth its cost must be able to pay out of the profits from its use and enjoyment an income bearing some relation to the interest due from an investment or loan of a sum of money equal to such cost, and over and above the loss by wear or waste.

*Id.*

Although in determining the value of railroad or canal property, for the purposes of taxation, the cost of creating it may be considered, yet its earning capacity should be the more controlling consideration or test.

*People, ex rel. Pres. D. & H. Canal Co., v. Roosa*, 2 How. (N. S.) 454.

*It seems* that to arrive at the assessed value of real estate not situate in the town or ward, if within the State, it may be ascertained from the proper assessment-rolls; if in another State or country, or if, for any other reason, its assessed value cannot be ascertained, the price paid, in the absence of proof or of any other standard, may be taken as the assessable value.

*People, ex rel. Twenty-third St. R. Co., v. Commissioners*, 95 N. Y. 554. See § 401, *post*.

**§ 391. Foreign Railroads.** — All corporations formed under the provisions of the "Act to authorize the formation of corporations for the purpose of acquiring, constructing and operating railroads in foreign countries," shall be subject to taxation upon the amount of the real or personal property owned by such corporations *within this State*.

Laws of 1881, chap. 468, § 13; *People v. Equitable Trust Co. of New London*, 96 N. Y. 387.

**§ 392. Railroad — Personal Property.** — The personal property of a railroad is to be assessed in the town, or ward, where the principal business office is located.

In assessing such property, the same rules prevail as in taxing

and assessing the personal property of other corporations for such property.

See *post*.

The officers of railroad corporations shall, on or before the first of July in each year, deliver to the assessors of any town or ward, where they are liable to taxation, a written statement, specifying the real estate owned in each town and its cost, the capital stock paid or secured to be paid, and the proportion of any held by the State or any incorporated literary or charitable institution, and the town or ward where their principal business is transacted.

See section 401.

§ **393. Foreign Railroads.** — The personal property within this State owned by the companies formed for the purpose of acquiring, constructing and operating railroads in foreign countries shall be subject to taxation.

Laws of 1881, chap. 468, § 13.

§ **394. Telegraph, Telephone and Electric Light Lines** are to be assessed in each town, or ward, for the portion thereof situated therein.

The word "lines" shall include the interest in the land on which the poles stand, the right of license to erect such poles on land, all poles, arms, insulators, wires and apparatus, instruments or other things connected with, or used as a part of such line, in such town or ward and belonging either to the owner of such line or the person, corporation or association in control thereof.

Laws of 1886, chap. 659.

So that the real estate is now assessed and taxed in the town, or ward, where situated.

The telegraph and telephone companies also pay a State tax on their *franchise*.

See *post*, State "Tax on Franchise."

Every company incorporated under the "Act to provide for the incorporation and regulation of telegraph companies," owning or using a line of electric telegraph, partly within and partly beyond the limits of this State, shall render to the proper officer a true report of the cost to such company of their works within this State; and the stock of such company in amount equal to such cost, or the dividends thereof, shall be subject to taxation, in the same manner and at the same rate as the stocks or dividends of other companies incorporated by the laws of this State are subject.

Laws of 1853, chap. 471.

These statutes make such companies liable on personal property for the State tax, to the State officers, and they should not be included in that part of the levy made by the board of supervisors for State taxes on personal property, but are liable, on such property, for county and town taxes, at the place where their principal office is located.

People v. Gold & Stock Tel. Co., 98 N. Y. 67.

The failure of such companies to make the required report does not deprive the assessors of jurisdiction to assess the property, and they were authorized, in fixing the amount, to proceed upon such information as they had.

People, *ex rel.* Mut. Un. Co., v. Com'rs, 99 N. Y. 254.

**§ 395. Plankroads and Turnpikes.**—So much of any such road and of the toll-houses, gates and other appurtenances thereof, constructed under the provisions of “An act to provide for the incorporation of companies to construct plankroads and of companies to construct turnpike roads,” as shall be within any town, city or village, shall be liable to taxation, in such town, city or village, as real estate.

Laws of 1847, chap. 210, § 48; 2 R. S. 1837.

**§ 396. Pipe-Line Companies.**—The real estate and personal property in this State, of such companies, shall be assessed and taxed in the several towns, villages and cities, in the same manner as the real estate and personal property of railroad corporations are assessed and taxed, and such company may commute therefor and pay the same in the same manner as railroad companies.

Laws of 1876, chap. 203, § 86; 2 R. S. 1649.

**§ 397. Toll-Bridges.**—In the case of toll-bridges, the company owning such bridge shall be assessed in the town or ward in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in the several towns or wards, the company shall be assessed in the town or ward in which the treasurer or other officer authorized to pay the last preceding dividend resides.

2 R. S. 990.

The real estate of such company is assessed in the town or ward in which it lies.

Hudson R. R. Bridge Co. v. Patterson, 74 N. Y. 365.

Its personal, where tolls are collected.

*Id.*

**§ 398. Apportionment for School Districts by Assessors.**—Of railroad, telegraph, telephone and pipe-line companies by assessors.

See *ante* “Common Schools,” § 98.



### § 399. Corporations.—Where Personal Property of Corporations Assessed.

The place named in the certificate of incorporation of a manufacturing corporation, organized under the general act, as the place where the operations of the company are to be carried on, and where the manufactory is situated, determines the location of the corporation in respect to its liability to taxation. It makes no difference that a treasurer's office is kept and the financial operations of the company are chiefly managed at another place.

Oswego Starch Co. v. Dilloway, 21 N. Y. 449; Western Trans. Co. v. Schen, 19 id. 408; Union Steamboat Co. v. City of Buffalo, 82 id. 351.

This applies to their personal property.

**§ 400. Corporations.—Personal Property.—Capital Stock.**—The capital stock of every company *liable to taxation*, except such part of it as shall have been excepted in the assessment-roll, or as shall have been exempted by law, together with its surplus profits or reserved funds exceeding ten per cent of its capital, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value, and taxed in the same manner as the other personal and real estate of the county.

Laws of 1857, chap. 456; 2 R. S. 1036; People, *ex rel.* Twenty-third Street R. Co. v. Com'rs of Taxes, 95 N. Y. 554; People, *ex rel.* Butchers, v. Astin, 22 N. Y. Week. Dig. 458.

**§ 401. Officers to Deliver Statements to Assessors.**—The president, cashier, secretary, treasurer or other proper officer of every such incorporated company shall on or before the first day of July in each year make and deliver to the assessors or one of them of the town or ward in which such company is liable to be taxed, according to the provision of the sixth section of the second title of this chapter, a written statement, specifying,

1. The real estate, if any, owned by such company, the towns or wards in which the same is situated, and the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in exempting therefrom the sums paid for real estate and the amount of such capital stock held by the State, and by any incorporated literary or charitable institution. And,

3. The town or ward in which the principal office or place of transacting the financial business of such company is situated; or if there be no such principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed under the provisions of this chapter.

2 R. S. 1036, § 2.

The third section required a report to be delivered to the comptroller, and is omitted.

The fourth and fifth prescribed a penalty for omissions to furnish such statements and for prosecuting therefor.

The sixth section directed how the assessors should enter such companies on their assessment-roll, and is omitted for the reason that the Court of Appeals decides that the amendment made by chapter 456, Laws of 1857, "changed the details of such assessments and that the rolls should be made substantially as follows:

"In the first column insert the name of the corporation;

"In the second, the quantity of real estate owned by it, situate in the town or ward;

"In the third, the assessed value of its real estate;

"In the fourth, the value of capital stock after making the exemption and deductions required by the act of 1857."

People, *ex rel.* Twenty-third Street R. Co., v. Com'rs, 95 N. Y. 554.

The act of 1857 is quoted above.

*It seems* also, that to arrive at the assessed value of the real estate not situate in the town or ward, if within the State, it may be ascertained from the proper assessment-rolls; if in another State or country, or if for any other reason its assessed value cannot be ascertained, the price paid, in the absence of proof or of any other standard, may be taken as the assessable value.

*Id.*

The capital stock is to be assessed at its actual value, from which is to be deducted the assessed value of its real estate and the other items specified in the above act.

People, *ex rel.* Butchers & H. Assoc., v. Asten, 22 N. Y. Week. Dig. 458 (100 N. Y. 597); People, *ex rel.* Twenty-third Street R. R. Co., v. Com'rs of Taxes, 95 N. Y. 554.

While the fact that the corporation has but little personal property; that its business of late has produced no dividends and sworn statements that the stock has no value, are subjects for consideration, they are not conclusive upon the question of value.

While the indebtedness of a corporation is a proper subject for consideration in estimating the value of its capital stock, there is no authority for deducting it from such value after such estimate has been made.

People, *ex rel.* Butchers & H. Assoc., v. Asten, 22 N. Y. Week. Dig. 458.

**§ 402. What "is Liable to Taxation" thereunder—Companies Liable to Taxation.**—All moneyed or stock corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital.

2 R. S. 1036.

The personal estate of every incorporated company, not made liable to taxation on its capital, as above, is exempt from taxation.

2 R. S. 982.

**§ 403. Banks, Shares in Personal Estate, how Taxed—Stockholders of Banks to be Taxed.**—

The stockholders in every bank or banking association organized under the authority of this State or of the United States shall be assessed and taxed on the value of their shares of stock therein; said

shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes at the place, city, town or ward where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town or ward or not; but in the assessment of said shares, each stockholder shall be allowed all the deductions and exceptions allowed by law in assessing the value of other taxable personal property owned by individual citizens of this State, and the assessment and taxation shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this State. In making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested, in which said shares are held, to the whole amount of the capital stock of said bank or banking association. Nothing herein contained shall be held or construed to exempt the real estate of banks or banking associations from either State, county or municipal taxes, but the same shall be subject to State, county, municipal and other taxation to the same extent and rate, and in the same manner according to its value as other real estate is taxed. The local authorities charged by law with the assessment of the said shares shall, within ten days after they have completed such assessment, give written notice to each bank or banking association of such assessment of the shares of its respective shareholders, and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act.

Laws of 1882, chap. 409, § 312. See *Williams v. Weaver*, 75 N. Y. 30.

The actual and not the par value is the basis of assessment and taxation.

*People v. Comrs.*, 67 N. Y. 516.

Subject to these two restrictions, to-wit:

1st. That the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individuals; and

2d. That the *shares* of any national banking association, owned by non-residents of any State, shall be taxed in the city or town where the bank is located and not elsewhere; the shares of any national bank association are subject to the above restrictions, properly included in the assessment of the owner or holder thereof,

U. S. Rev. Stat., § 5219; *Van Allen v. Assessors of Albany*, 3 Wall. 573; *People v. Comrs. of N. Y.*, 4 id. 244; *Bradley v. People*, id. 459.

and taxed at their market value.

*Hepburn v. School Directors*, 23 Wall. 113; *People v. Commissioners of N. Y.*, 94 U. S. 415.

The taxation of the *capital* of national banks is not proper or legal.

*Id.*

Where the capital of a national bank was \$1,000,000, divided into 25,000 shares of \$40 each, and assessed at \$56 per share, aggregating \$1,400,000, and the real estate assessed at \$200,000, being one-seventh,—*Held*, that the deduction from each share as assessed should also be one-seventh, or \$8.

People, *ex rel.* Tradesman's N. Bk., v. Comrs., 69 N. Y. 91.

**List of Stockholders.**—There shall be kept at all times in the office where the business of each bank or banking association, organized under the authority of this State or of the United States, shall be transacted, a full and correct list of the names and residences of all the stockholders therein, and of the number of shares held by each; and such list shall be subject to the inspection of the officers authorized to assess taxes, during the business hours of each day in which business may be legally transacted.

Laws of 1882, chap. 409, § 313.

**§ 404. Non-Resident Stockholders.**—When the owner of stock in any bank or banking association organized under the laws of this State or the United States shall not reside at the same place where the bank or banking association is located, the collector and county treasurer shall, respectively, have the same power as to collecting the tax to be assessed by this act as they have by law when the person assessed has removed from the town, ward or county in which the assessment was made; and the county treasurer, receiver of taxes or other officer authorized to receive such tax from the collector may, all, or either of them, have an action to collect the tax from the avails of the sale of his, her or their shares of stock, and the tax on the share or shares of said stock shall be and remain a lien thereon from the day when the property is by law assessed, till the payment of said tax, and if transferred after such day, the transfer shall be subject to such lien.

*Id.*, § 314.

**§ 405. Banks to Retain Dividends.**—For the purpose of collecting the taxes to be assessed under the last three preceding sections of this act, and in addition to any other law of this State, not in conflict with the Constitution of the United States, relative to the imposition of assessment and collection of taxes, it shall be the duty of every such bank or banking association, and the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholder as shall be necessary to pay any taxes assessed in pursuance of the last three preceding sections of this act, until it shall be made to appear to such officer or officers that such taxes have been paid.

*Id.*, § 315.

The shareholders of any bank, banking association or corporation doing a banking business under the general banking law or a special charter of this State, shall be assessed and taxed, with respect to their shares of stock, only at the same rate and place, to the same extent, and in the same manner, as shareholders of national banks may be liable at the same time to be assessed and taxed by authority of the State of New York; provided, however, that no debts shall be deducted from any such assessment of any person applying for the benefit of this act, which have been deducted from the assessment of other personal property of such person; and, in making application for such deduction, every person making the application shall make oath that he has not applied to have such debts deducted from any other assessment against him, and that no such deduction has been made.

Id., § 318.

It will be seen from the above that banks are not taxed *directly* upon their *capital*; but the individual shareholders are assessed and taxed in the town or ward where the bank is located, upon the shares owned by them, after making the deductions above specified.

**Individual Bankers—Oath of Individual Bankers.**—Every individual banker doing business under the laws of this State is hereby required to declare upon oath before the assessor the amount of capital invested in such banking business, and each \$100 of such capital, for the purpose of this act, and for the purpose of taxation, shall be held and regarded as one individual share in such banking business, and such shares are hereby declared to be personal property. If such banker have partners, he shall declare upon oath before the assessor the number of shares held by each of them in such banking business, ascertained as above provided, and the shares so held by any partner shall be included in the valuation of his taxable property in the assessment of all taxes levied in the town, school district or ward where such individual banker is located, and not elsewhere; and such individual banker shall pay the same, and make the amount so paid a charge in his accounts with such partners; and if such individual banker have no partners, he shall be held to be sole owner of all the shares in such business of banking, and the same shall be included in the valuation of his personal property in the assessment of all taxes levied in the town, school district or ward where his bank is located, and not elsewhere.

Id., § 320.

**Foreign Banking Corporations.**—These pay a *State* tax directly to the State officers.

*Id.*, § 321.

**§ 406. Savings Banks.**—The privileges and franchises granted by the legislature of this State to savings banks, or institutions for savings, are hereby declared to be personal property, and liable to taxation as such in the town or ward where they are located, to an amount not exceeding the gross sum of their surplus earned (after deducting the amount of such surplus invested in United States securities), and the officers of such banks or institutions may be examined on oath by assessors as to the amount of such surplus and securities; and the property of such banks and institutions shall be liable to seizure and sale for the payment of all taxes assessed upon them for said privileges and franchises.

Laws of 1866, chap. 761, as amended by Laws of 1867, chap. 861.

This statute is held to be still in force.

*People, ex rel. Ithaca Sav. Bank, v. Beers*, 67 How. 219. Its history may be traced in chap. 371, Laws of 1875; chap. 409, Laws of 1882.

Under this statute of 1867, if the surplus of the savings bank was not invested in United States securities, the assessors had authority to assess the bank for its privileges and franchises as personal property, to the extent of its surplus not so invested.

Before it can be held that there is a surplus \* \* \* which is liable to assessment and taxation, there must be deducted from the total assets of such bank:

First, the amount of all just debts owing by it; and, second, the amount of its assets which are actually invested in United States securities, and the remainder is the only surplus which is subject to assessment and taxation.

*Id.*

**Deposits in Savings Banks.**—The deposits in any bank for savings which are due to depositors, and the accumulation in any life insurance company organized under the laws of this State, so far as the said accumulations are held for the exclusive benefit of the assured, shall not be liable to taxation, other than the real estate and stocks which may be owned by such bank or company, and which are now liable to taxation under the laws of the State.

Laws of 1857, chap. 456; 2 R. S. 986. But see Laws of 1884, chap. 353 (sec. 408, *post*).

**§ 407. Insurance Companies — Life Insurance.**—By chapter 534, Laws of 1880, the personal property and shares of stock of every life insurance company *incorporated under the laws of this State* was exempted from assessment or taxation, except for the *State* tax which was to be paid to the State treasurer by the company directly, so that the assessors in towns or wards had

nothing to do with assessing such companies on *said* property, and such property should not be entered on their assessment-roll. Of course, their real estate was to be assessed and taxed in the same manner that an individual's is.

**§ 408. Co-Operative or Assessment Insurance or Casualty Companies.**—All money, benefits, charity, relief or aid, received or collected by any corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan under the act of 1883, chapter 175, and which money, benefits, charity, relief or aid are derived from admission fees, dues and assessments, or any interests or other accretions thereon, and which are to be used for the payments of assessments or for death losses, or for benefits to disabled members, shall be exempt from assessment and taxation ;

Laws of 1884, chap. 353.

and the part thereof paid to the widow of a deceased member is also exempt.

Laws of 1884, chap. 116.

**§ 409. Fire and Marine Insurance.**—In 1886 a statute purporting to be an "Act to provide for the taxation of fire and marine insurance companies" was passed, which reads as follows:

#### CHAP. 679.

**AN ACT** to provide for the taxation of fire and marine insurance companies.

PASSED June 15, 1886; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Every fire or marine insurance company, incorporated or organized under the laws of this State, or incorporated or organized under the laws of any foreign country, and doing business in this State, shall, annually, on or before the first day of August, pay to the treasurer of the State, as a tax on its corporate franchise or business in this State, a sum equal to one-half of one per centum upon the gross amount of premiums received by such company during the year ending the preceding thirtieth day of June, on business done in this State by such company, whether the said premiums were in money or in the form of notes, credit or any other substitute for money.

§ 2. Every such insurance company shall, annually, on or before the first day of August, make a return to the comptroller of the State, signed and sworn to by its president and secretary or manager, giving the total amount of premiums received by such company during the year ending the preceding thirtieth day of June, on business done in this State by such company, whether the said premiums were in money or in the form of notes, credits or any other substitute for money.

§ 3. If any officer of any insurance company required by the preceding section to make and execute a return shall refuse or willfully neglect to make and execute the same, such officer shall be guilty of a misdemeanor, and any such officer who in such return shall make a willful false statement shall be subject to the pains and penalties of perjury. All taxes unpaid when due by such company under this act may be collected by actions brought in the supreme court in the name of the people of the State, by the attorney-general at the instance of the comptroller, and in such action the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until such tax due and unpaid, together with interest and the costs of the action, are paid, and until the return required by this act is made.

§ 4. The lands and real estate of such insurance companies shall continue to be assessed and taxed where situated for State, city, town, county, village, school or other local purposes; but the *personal property, franchise and business of all insurance companies incorporated* under the laws of this State, or any other State or country and doing business in this State, and the shares of stock of said companies shall hereafter be exempt from all assessment or taxation except as in this act prescribed; provided that this section shall not affect the fire department tax of two per cent now required to be paid.

§ 5. The taxes imposed by this act, and the revenue derived therefrom, shall be paid into the treasury for account of the general fund, and shall be applicable to the payment of the ordinary and current expenses of the State.

§ 6. This act shall take effect immediately.

This statute is quite peculiar in its phraseology.

Its title *purports* to relate to the taxation of fire and marine insurance companies.

The fourth section says: "The personal property, franchise and business of ALL insurance companies \* \* \* \* doing business in this State and the shares of stock of said companies shall hereafter be exempt from all assessment, or taxation, except as in this act prescribed," to-wit, the State tax on franchise.



Heretofore such companies were liable to pay

1. The State tax.

Laws of 1880, chap. 542, as amended by Laws of 1881, chap. 361.

2. The county and town, or city taxes.

What the judicial construction of the act may be it is not for the editor to say.

It is quite evident that it attempts to rid those companies of their share of the county and town taxes, under the false title set forth in the statute.

Whether the attempt is successful and the act constitutional are questions for the courts.

#### FOREIGN FIRE INSURANCE COMPANIES.

The capital of a foreign fire insurance company was determined by the superintendent of the insurance department, who issued a certificate thereof. Such capital, as determined and certified, was assessed at the place where the principal office of such company was located.

Laws of 1871, chap. 888, §§ 2, 3, 7. See, also, Laws of 1866, chap. 825.

**§ 410. The State Tax on Franchise, Etc.** — In 1880 a new and distinct system was introduced in this State, for the purpose of raising moneys from corporations for the use of the State, by which domestic and foreign corporations doing business within the State, except certain ones, were to make returns, or reports, to the comptroller, and to pay a certain sum to State officers for *State* purposes.

The corporations, etc., included in this system were :

#### ON FRANCHISE.

*Every* corporation, joint-stock company or association *whatever* now or hereafter incorporated or organized under any law of this State, or now or hereafter incorporated or organized by or under the laws of any other State or country, and doing business in this State, except savings banks and institutions for savings, life insurance companies, banks and foreign insurance companies, and manufacturing or mining corporations carrying on manufacture, or mining ores within this State, which exception shall not be taken to include gas companies or trust companies, are subject to a tax upon its corporate franchise or business.

As amended by Laws of 1885, chap. 359.

*Second.* Every insurance company and every association organized or incorporated by or under any law of this State, and of every person or partnership doing an insurance business in this State, except life insurance companies and purely mutual beneficial associations, whose fund for the benefit of members, their families or heirs, is made up entirely of contributions of their members and the accumulated interest thereon ; and

Every company or association organized under the laws of any other State or country, and every person or partnership doing an insurance business in this State, except as aforesaid ; and

Every corporation formed for railroad, canal, steamboat, ferry, express, navigation or transportation purposes, and every elevated railway company, and every other corporation, joint-stock company or association now or hereafter incorporated or organized by or under any law of this State, or now or hereafter incorporated or organized by or under the laws of any other State or country, and doing business in this State, and owning, operating or leasing to or from another corporation, joint-stock company or association, any railroad, canal, steamboat, ferry, express, navigation, pipe-line or transportation route or line, or elevated railway or other device for the transportation of freights or passengers, or in any way engaged in the business of transporting freights or passengers, and every telegraph company or telephone company incorporated under the laws of this or any other State, and doing business in this State, and every express company or association, palace-car or sleeping-car company or association, incorporated or unincorporated, doing business in this State, are required to pay a *State* tax to the *State* officers.

And are exempt from assessment and taxation for *State purposes* (except upon their *real estate*); in other words, are not liable to pay, except on real estate, that part of the *State taxes* included in the levy made by the board of supervisors, but are liable for the county and town taxes included in said levy.

People, *ex rel.* Westchester Fire Ins. Co., v. Davenport, 25 Hun, 630 ; S. C., 91 N. Y. 574 ; People, *ex rel.* Eastern Trans. Line, v. Com'rs, 26 Hun, 446.

The amount of capital stock which shall be the basis for tax is the amount thereof employed within this State.

Laws of 1885, chap. 501.

Trust companies are subject to the provisions of this law.

Laws of 1882, chap. 409, § 324.

Pipe-line companies are also subject thereto.

See *ante*, "Pipe-Line Companies."

**§ 411. Application for Reduction.**—Corporations may apply to the assessors for a reduction of their assessments in the same manner as private persons heretofore given.

Laws of 1857, chap. 536, § 3.

**§ 412. Exemption.**—Corporations are entitled to the same exemptions of property from taxes as individuals.

People v. Commissioners of Taxes, 23 N. Y. 192.

**§ 413. Duty of Board of Supervisors as to Incorporated Companies.**—The amount of taxes assessed on all incorporated companies liable to taxation shall be set down by the board of supervisors in the fifth column of the corrected assessment-roll, and shall form a part of the moneys to be collected by the collector.

2 R. S. 1037, § 15.

The board of supervisors, having completed the assessment, shall transmit to the comptroller, with the aggregate valuations of the real and personal estate in their county, a statement showing the names of the several incorporated companies liable to taxation in such county; the amount of the capital stock paid in, and secured to be paid in, by each; the amount of real and personal property of each as put down by the assessors, or by them; and the amount of taxes assessed on each. In those counties in which there is no such company, the boards of supervisors shall certify such fact to the comptroller with their returns of the aggregate valuations of real and personal estate.

2 R. S. 1038, § 16.

## CHAPTER VII.

### EQUALIZATION.

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|---|--|
| Sec. 414. Equalization by the board of supervisors.                       | Sec. 420. Form of report.                    |
| 415. Aggregate valuation.   | 421. Appeal from equalization by supervisor. |
| 416. Assessment-roll to be delivered to clerk.                            | 422. Proofs thereon.                         |
| 417. To publish proceedings.  | 423. Nature of evidence.                     |
| 418. Clerk to transmit return to comptroller.                             | 424. Appeal where heard.                     |
| 419. Board of equalization in the county of Oneida—Laws relating thereto. | 425. Costs on appeal.                        |
|   | 426. Procedure on appeal.                    |
|   | 427. Form of notice of appeal and affidavit. |

**§ 414. Equalization by the Board of Supervisors.**—The board of supervisors of each county in this State at their annual meeting shall examine the assessment-rolls of the several towns in their county, for the purpose of ascertaining whether the valuations in one town or ward bear a just relation to the valuations in all the towns and wards in the county; and they may increase or diminish the aggregate valuations of real estates in any town or ward by adding or deducting such sum *upon the hundred* as may, in their opinion, be necessary to produce a just relation between all the valuations of the real estates in the county; but they shall, in no instance, reduce the aggregate valuations of all the towns and wards below the aggregate valuation thereof as made by the assessors.

2 R. S. 996, § 31.

**§ 415. Aggregate Valuation.**—They shall also add up and set down the aggregate valuations of the real and personal estates in the several towns and wards as corrected by them; and shall cause their clerk to transmit to the comptroller, by mail, a certificate of such aggregate valuations, showing separately the aggregate amount of real and personal estates in each town or ward, as corrected by the board.

Id., § 34.

**§ 416. Copy of Corrected Assessment-Roll to be Delivered.**—They shall cause the corrected assessment-roll of each town or ward, or a copy thereof, to be delivered to each of the supervisors of the several towns or wards, who shall deliver

the same to the clerk of their city or town, to be kept by him for the use of such city or town.

Id., § 35.

**§ 417. To Publish Proceedings.**—It is the duty of the board of supervisors annually to publish in one or more public newspapers in such county their proceedings upon the equalization of the assessment-roll.

Laws of 1839, chap. 869; 2 R. S. 929.

**§ 418. Clerk to Transmit Return to Comptroller.**—The clerk of the board of supervisors of the several counties in this State shall, on or before the second Monday in December in each year, transmit to the comptroller by mail, in the form which shall be prescribed by the comptroller, a certificate or return of the aggregate valued amount of real and personal estate in each town or ward, as corrected by the board of supervisors. The clerk who shall neglect or refuse to make such return shall forfeit to the people of this State the sum of \$50.

Laws of 1836, chap. 117; 2 R. S. 997.

If it is deemed necessary to add to the aggregate valuation of real estates in any town or ward, the strict letter of the law requires them, instead of adding a gross sum to the aggregate valuation, to add to the assessed valuation a specified sum upon each hundred dollars. Thus, where a board of supervisors, deeming it necessary to add \$300,000 to the aggregate valuation of the real estate of a particular town, resolved to add the sum in gross, it was held that the board should have voted to add \$19.54 to every hundred dollars, amounting in the aggregate to \$300,000; but that adding a gross sum was not such a material departure from the statute as would vitiate the tax.

Talmadge v. Bd. of Suprs. of Rensselaer Co., 21 Barb. 611.

The duties imposed by the tax laws upon boards of supervisors, of examining the assessment-rolls and equalizing the valuation of the real estates in the different towns and wards are *quasi* judicial, and cannot be delegated, but must be performed by the board as such.

Bellinger v. Gray, 51 N. Y. 610,

In equalizing assessments, the board cannot make allowances for omissions of taxable persons or property, from the roll by assessors.

People, *ex rel.* Suprs. of Monroe Co., v. Hadley, 1 Abb. N. C. 441.

They are simply to equalize valuations as between the several towns and wards in the county. They deal with the towns and wards as units. If the assessors have *omitted persons or property*, they cannot take the fact of such omis-

sion into consideration, for the purpose of increasing the valuation in the town or ward where the omission occurred.

Id.

The power of equalization by the board is confined to *real* property only.

Id.; People, *ex rel.* Bd. of Suprs. of Westchester Co., v. Hadley, 76 N. Y. 837.

They are confined to the valuation of real estate.

Id.

## § 419.

Many inquiries having been made as to the county board of equalization in Oneida county, the law relating to it is here inserted.

### LAWS OF 1881, CHAP. 673.

AN ACT to create a board of equalization in the county of Oneida.

SECTION 1. At the annual sessions of the board of supervisors of the county of Oneida, the said board shall, within the first three days thereof, appoint a committee of three persons in each of the assembly districts therein, which shall be known and designated as the board of equalization in and for said county.

§ 2. The said committee for each of said districts shall be nominated by the representatives within the same, subject to confirmation by the board, and no city, town or ward shall be represented in said board of equalization by more than one person in each year.

§ 3. The said committee shall be chosen in equal numbers as near as can be done from each of the two leading political parties, and no person holding the office of supervisor, or any office arising from or connected with the board of supervisors, shall be eligible thereto.

§ 4. No person shall be eligible to such appointment who was not assessed upon the assessment-rolls of the city or town in which he resides made next preceding such appointment, for a freehold estate in his own right to an amount in cities not less than \$1,000, and in towns not less than \$500, or who holds any county office, the compensation of which is determined and provided by said board of supervisors, or who is not at the time a resident of the assembly district from which the selection shall be made.

§ 5. The said board of equalization shall meet annually within the first fifteen days (Sundays excepted) of the annual sessions of the board of supervisors, at the place where such annual sessions shall be held, and shall equalize the assessed valuation of the real estate of said county in the manner and in the form which boards of supervisors are authorized and required to do, and shall report the result of their action to the board of supervisors, and such result, concurred in by at least seven members of said board of equalization, shall be the equalized valuation in said county, and shall be conclusive and final for such year.

§ 6. The members of said board of equalization shall, previous to entering upon the discharge of the duties hereby conferred, take and subscribe the constitutional oath of office, which shall be filed in the office of the clerk of said board of supervisors.

§ 7. The said board of equalization shall each be paid a compensation of \$3 per day for each day actually and necessarily employed in the discharge of their duties, and mileage at the rate of eight cents per mile for once going to and returning from the sessions of said committee, computing the distance by the usual traveled route, but the aggregate *per diem* to each member shall not exceed five days.

§ 8. If any member of the committee appointed in pursuance of this act shall decline, omit, resign, or be unable from any cause to discharge the duties thereof, the vacancy shall be filled in the manner provided by section two hereof immediately upon the announcement of such vacancy.

§ 9. All acts and parts of acts inconsistent or in conflict with the provisions of this act, so far as the same are applicable to the county of Oneida, are hereby repealed.

This law has been in successful operation and effect for five consecutive years without controversies, friction or irritation.

The report of the board of equalization upon the subject is final and conclusive, and thus far in its history it has received the signatures of its nine members, and the board of supervisors have uniformly and *unanimously* approved their action and conclusions. Previous to its passage, the county had annual appeals to the State board, involving controversies most bitter, and expenses equally exhaustive.

The following is the form of report as made by this board of equalization in pursuance of the law quoted. No concurrence or confirmation by the board of supervisors is requisite, the action of the first board being "*final*"

In the other counties, the report of the committee upon this subject, is a *recommendation* only, to be concurred in by the board of supervisors, and the *form* of their report should be varied and prepared accordingly. The tabulated portion of the form will apply to all counties.

## § 420. Form of Report.

### REPORT OF BOARD OF EQUALIZATION.

TO THE BOARD OF SUPERVISORS OF THE COUNTY OF ONEIDA:

The committee created by your body for the purpose (in pursuance of chapter 673, Laws of 1881), having examined and compared the assessed valuations of real estate in this county for the current year, have established, fixed and equalized the same in the several towns and cities, as contained in the following tabulated statement thereof

TOWNS.	No. of acres	Real estate by assessors	Real estate as equalized	Personal	Total.
Annsville .....	36.152	\$570.418 00	\$570.418 00	\$13.700 00	\$584.118 00
Augusta .....	16.617	818.845 00	818.845 00	108.650 00	927.495 00
Ava .....	22.116	276.100 00	266.100 00	6.775 00	272.875 00
Boonville .....	43.529	998.160 00	998.160 00	127.040 00	1,125,200 00
Bridgewater .....	14.602	654.445 00	654.445 00	41.705 00	696,150 00
Camden .....	32.185	1,072.288 00	1,007.288 00	170.970 00	1,178,258 00
Deerfield .....	22.392	881.852 00	926.852 00	3,000 00	929,852 00
Florence .....	32.319 7-16	282.810 00	288.810 00	3,400 00	292,210 00
Floyd .....	20.891	573.607 00	521.607 00	32,827 00	554,434 00
Foresiport .....	41.475	74.683 58	74.683 58	550 00	75,233 58
Kirkland .....	19.780 1-2	1,834.025 00	1,834.025 00	43.400 00	1,877,425 00
Lee .....	28.208	647.395 00	647.395 00	15,550 00	662,945 00
Marcy .....	18.956 1-4	729.126 00	719.126 00	18,880 00	738,006 00
Marshall .....	19.388	1,034.420 00	1,126.420 00	44,700 00	1,171,120 00
New Hartford .....	16.507 1-4	2,002.892 00	1,827.892 00	293,950 00	2,121,842 00
Paris .....	18.623	1,450.350 00	1,287.350 00	213,200 00	1,500,550 00
Remsen .....	23.566	411.421 00	416.421 00	54,340 00	470,761 00
Rome .....	43.801 15-100	6,612.653 00	5,762.653 00	581.753 20	6,244,406 20
Sangerfield .....	17.503 3-4	1,532.953 00	1,347.953 00	169,227 00	1,517,180 00
Steuben .....	25.782 3-4	464.571 00	474.571 00	10,420 00	484,991 00
Trenton .....	27.677 1-2	1,003.830 00	1,008.830 00	67,530 00	1,076,360 00
Utica .....	.....	15,939.471 00	17,351.471 00	2,446,734 00	19,798,205 00
Vernon .....	23.916	1,076.353 00	1,141.353 00	160,497 00	1,301,850 00
Verona .....	42.142	1,825,800 00	1,885,800 00	63,530 00	1,949,330 00
Vienna .....	37.698	415,920 00	415,920 00	12 700 00	428,620 00
Western .....	33.306	764.870 00	764.870 00	49,200 00	814,070 00
Westmoreland .....	25.574	1,351,800 00	1,201,800 00	47,900 00	1,249,700 00
Whitestown .....	16.210	2.828.305 00	2,788.305 00	191,300 00	2,979,605 00
	721.870 1-2	\$48.129 363 58	\$48,129,363 58	\$4,993.428 20	\$53,122 791 78

All of which is respectfully submitted.

EVAN J. EVANS,  
D. A. CRANE.  
PHILIP MILLER,  
T. S. GEARY.

E. S. WILLIAMS,  
J. W. COOK,  
S. M. SMITH,  
JAMES G. PRESTON,

WILLIAM BRILL.

BOARD OF EQUALIZATION IN AND FOR SAID COUNTY.

UTICA, December 4, 1885

TABLE PREPARED BY THE BOARD OF EQUALIZATION, 1885.

TOWNS	Real estate by assessors, 1885.	Incorporated property.	Village property.	Equalized valuation.
Annsville.....	\$570,418 00	\$38,478	\$66,730	\$570,418
Augusta.....	818,845 00	15,500	172,745	818,845
Ava.....	276,100 00	385	9,995	266,100
Boonville.....	998,160 00	109,100	348,350	998,160
Bridgewater.....	654,445 00	51,415	72,020	654,445
Camden.....	1,072,288 00	115,950	363,453	1,007,288
Deerfield.....	881,852 00	5,020	123,545	926,882
Florence.....	282,810 00	280	20,010	288,810
Floyd.....	573,607 00	660	12,890	521,607
Forestport.....	74,683 58	---	16,420	74,683
Kirkland.....	1,834,025 00	221,850	434,250	1,834,825
Lee.....	647,395 00	---	79,095	647,395
Marcy.....	729,126 00	101,836	6,350	719,126
Marshall.....	1,034,420 00	69,000	93,440	1,126,420
New Hartford.....	2,002,829 00	497,490	394,602	1,827,829
Paris.....	1,450,350 00	228,980	171,300	1,287,350
Rome.....	6,612,053 00	1,415,528	3,829,100	5,762,053
Remsen.....	411,421 00	33,829	58,220	416,421
Sangerfield.....	1,532,953 00	72,275	558,365	1,347,953
Steuben.....	464,571 00	27,291	6,410	474,571
Trenton.....	1,003,830 00	101,980	153,570	1,008,830
Utica.....	15,939,471 00	2,072,816	---	17,351,471
Vernon.....	1,076,353 00	140,500	118,550	1,141,353
Verona.....	1,825,800 00	608,200	104,840	1,885,800
Vienna.....	415,920 00	66,970	48,020	415,920
Western.....	764,870 00	---	64,460	764,870
Westmoreland..	1,351,800 00	118,950	82,309	1,201,800
Whitestown.....	2,828,305 00	1,075,230	547,440	2,788,305

E. J. EVANS,  
CHAIRMAN.

**§ 421. Appeal From Equalization by Supervisor.**—Any supervisor may appeal in behalf of the town, city or ward which he wholly or in part represents, to the State assessors, from any act or decision of the board of supervisors in the equalization of assessments, and the correction of the assessment-rolls, under the provisions of the first title of chapter thirteen of the first part of the Revised Statutes. Such appeal shall be brought by serving a notice thereof, within ten days after the corrected assessment-rolls shall be completed by the board of supervisors or the chairman and clerk of said board, and also filing such notice in the office of the clerk of the county, together with the affidavit of the supervisor so appealing, that, in his opinion, injustice has been done to such town, city, or ward, by the act or decision appealed from, and a notice of such appeal shall be served on the State assessors by filing the same in the office of the secretary of State within ten days after the final completion of the corrected assessment-rolls by the board of supervisors, and such notice shall also be served on the chairman of said board of supervisors within the same time.

Laws of 1859, chap. 312, § 13; Laws of 1874, chap. 351, § 5, as amended by Laws of 1880, chap. 80; 2 R. S. 1001, 1004.

See forms below.



**§ 422. Proofs Thereon.**—The State assessors shall hear the proofs of the parties which may be presented in the form of affidavit or otherwise, as they shall direct; after hearing such proofs they shall determine whether any, and if any, what deduction ought to have been made from the corrected valuations of such town, city or ward; and in the assessment and collection of taxes of the next following year, such town or city shall be credited with the amount of taxes levied from it on such excess of valuation, and the same shall be levied and collected from the other towns and cities of the county.

*Id.*

See Nature of Evidence, *post*.

The State assessors shall have power to subpoena witnesses and to compel their attendance and to examine them under oath in the same manner as though such subpoena had issued from a court of record of this State, and all State, county, city and town officers shall furnish them with all information belonging to or connected with their respective offices and copies of all papers in their various offices which the assessors may require of them in the proper discharge of their duties.

Laws of 1859, chap. 312, § 4, as amended by Laws of 1884, chap. 435.

**§ 423. Nature of Evidence — State Assessors to Determine Appeals.**—On every such hearing or trial, the evidence shall in part relate to the assessment and full and true value of real and personal property, and the said State assessors shall determine whether or not injustice has been done to the town, ward or city, so appealing, in the equalization of real and personal property assessed therein, as compared with the other wards, towns or cities of said county, and shall determine whether any, and if any, what deductions ought to be made from the aggregate corrected valuation of said real and personal property, as made by the said board of supervisors, and shall also determine to what town or towns, ward or wards, city or cities, in such county, said deductions, if any, shall be added, and shall certify their determination in writing to said board of supervisors and forward the same by mail within ten days thereafter, to the clerk of said board of supervisors, directed to him at his post-office address.

Laws of 1876, chap. 49, § 3; 2 R. S. 1005.

Under this act it is held that the State assessors are authorized and it is their duty, upon appeal, to determine

1st Whether the town appealing has suffered injustice as compared with other towns in the county.

2d. Whether such town shall have a deduction from its valuation and the amount thereof

3d. Upon what other town or towns such deductions shall be placed and the portion thereof which shall be placed on each.

People, *ex rel* Bd. of Suprs. of Westchester Co., v Hadley, 76 N. Y. 337

The comparison is not between the town appealing and the residue of the county as an entirety, but between it and the other towns as distinct and separate organizations.

Id

It is essential that said assessors shall take into consideration the valuation of all the towns in the county separately, and if they find injustice has been done to the appealing town by an excessive valuation as compared with some of the towns, they may remedy it by thus placing the excess upon those towns; and this although other towns which have not appealed, have suffered a like injustice; for the purpose of correcting the injustice complained of these towns cannot be regarded.

Id.

The State assessors are not required upon such an appeal to take testimony as to the amount and value of the *personae* property in the towns.

As a board of supervisors in making equalization are *confined* to the valuation of *real estate*, the State assessors have no authority beyond this.

Id.

It is not an available objection where the decision of the State assessors was forwarded by mail in due season, that it was not filed with the clerk of the board of supervisors before the beginning of the next annual meeting.

Id.

When such decision was certified and forwarded by mail to the board of supervisors, within ten days after it was made and signed by the State assessors, but not until *after* the commencement of the next annual session, and the board omitted to carry the decision into effect, *held* that a *mandamus* would lie to compel the execution of such decision.

People, *ex rel*, Robison, v. Bd. of Suprs. of Ontario Co., 85 N. Y. 323.

**§ 424. Appeal, Where Heard.**—Every such appeal duly brought shall be heard by said board in the county in which such appeal originated, at a time and place to be fixed by said board, and they shall notify the supervisor of the town, ward or city appealing, by mail, of the time and place so fixed upon, at least twenty days prior thereto. In case the appellant or his successor fails to appear and produce evidence to sustain the appeal, at the time and place appointed, or on the day to which such hearing shall have been adjourned, if an adjournment shall have been had, said State assessors shall make an order dismissing said appeal as not sustained, which shall have the same effect, in all respects, as if said appeal had not been sustained after a hearing on the merits on evidence.

Laws of 1876, chap 49, § 2, 2 R. S 1004.

**§ 425. Costs on Appeal.**—Whenever any appeal so made shall not be sustained, the State assessors shall certify the reasonable costs and expenses arising therefrom and connected therewith on the part of the respondent and appellant, and such costs and expenses so certified shall be a charge upon the town, city or ward whose appeal is not sustained, which shall be audited by the board of supervisors, and levied upon the taxable property of said town, city or ward; and whenever any appeal so made shall be sustained, the State assessors shall certify the reasonable costs and expenses arising therefrom and connected therewith, on the part of the appellant and respondent, and such amounts so certified shall be audited by the board of supervisors and levied and collected from all the towns and cities of the county in the assessment and collection of taxes for the current year, excepting those towns and cities in which such appeal was sustained; and whenever more than one town or city in a county shall have appealed, some of which are sustained and some dismissed, it shall be the duty of the State assessors to decide what portion of the costs and expenses shall be borne by the town or towns, city or cities in which such appeal was dismissed.

Id., § 15, as amended by Laws of 1884, chap. 435.

Stenographer's fees part of the costs.

Laws of 1884, chap. 280.

By the rules of the State assessors the amount of costs and expenses is limited to \$2,000.

See "Rule 10," below.

The statute seems to limit the amount which the board of supervisors can audit, to the amount certified by the State assessor. So that the case of *The People, ex rel. Burhans, v. Supervisors*, will not now apply.

32 Hun, 607.

**§ 426. Procedure on Appeal.**—The State assessors are empowered, subject to the approval of the comptroller, to prepare forms of petition and notice of appeal, rules and regulations in relation to bringing such appeals, and the hearing or trial.

Laws of 1876, chap. 49, § 1.

The following are the forms and rules prescribed:

### **§ 427. Form of Notice of Appeal and Affidavit.**

TO THE BOARD OF SUPERVISORS OF THE COUNTY OF

GENTLEMEN — Take notice that, as supervisor of the town of  
I hereby appeal to the State assessors of the State of New York, in behalf of said

town, from the act or decision of the board of supervisors of said county of in the equalization of assessments and correction of the assessment-rolls of the different towns in said county, made on the                      day of                      , A. D. 18                      .

Dated                      , A. D. 18                      .

Signed (                      )

SUPERVISOR OF THE TOWN OF

STATE OF NEW YORK, }  
COUNTY,                      } ss.:

                    , in said county of                      , being duly sworn, deposes and says he is the supervisor of the town of                      , and in his opinion, injustice has been done to said town by the act or decision of the board of supervisors of the county of                      , in the equalization of assessments and the correction of the assessment-rolls of said county, as made on the                      day of                      .  
A. D. 18                      .

Signed (                      )

Subscribed and sworn to before me, this }  
day of                      , A. D. 18                      . }

Rule 1st of January 22, 1884.

The other rules are as follows:

*Second.* On the hearing, the appellant shall be deemed to have the affirmative, and the action of the board of supervisors shall be regarded *prima facie*, as correct, until such presumption is overcome by evidence establishing the allegation of injustice done to the appealing town, ward or city.

*Third.* The board of supervisors shall be deemed the respondent.

*Fourth.* In order to establish the allegation of injustice and erroneous equalization, the appellant must show by evidence, oral documentary (or by depositions, when said board so directs), the full and true value of sufficient property in each town, ward or city of said county, to determine the full and true value of the whole of the property of said town, ward or city, with reasonable accuracy.

*Fifth.* The board of State assessors will require the production of all the assessment-rolls on which the board of supervisors made the equalization appealed from, and such rolls will be regarded as a part of the evidence in the case.

*Sixth.* The appellant will be required to present a correct statement of the railroads in each of the towns and cities of the county. Such statement must contain the name of the railroad, miles of road-bed and width of the same, number of continuous tracks and length of switches or side tracks, real estate, if any, outside of road-bed, and the estimated full value of all buildings, as depots, workshops, round-houses, water tanks, etc.

*Seventh.* The appellant will also be required to present at such hearing, the area in acres and assessment (for purpose of county and State taxation) of each incorporated village in the county. This will not be required in counties where assessors have made separate assessments for farm and village property.

*Eighth.* The appeal will be heard at the time and place appointed, unless sufficient cause shall then and there be shown by affidavit, why an adjournment should be granted.

*Ninth.* After the fixing of the time and place for the hearing of said appeal, it shall be the duty of the appellant or his successor, to serve notice of the said hearing and the time and place thereof, on the clerk of the board of supervisors of the county wherein said appeal originates, at least fourteen days prior to the time so appointed, personally or by mail, addressed to him at his place of residence, or of his usual post-office address; and to furnish said board of State assessors at the time of hearing, proof by affidavit of the due service of said notice, made by the person making such service, or by the written admission of such service, signed by said clerk (unless some person duly authorized shall appear at said hearing in behalf of the respondents). In case of vacancy in the office of clerk of the board of supervisors, then such notice shall be served by the said appellant or his successor, upon the clerk of the said county, within the

time and in the manner hereinbefore provided. It shall be the duty of the clerk receiving such notice, to immediately serve a copy of the same on each of the supervisors of said county, personally or by mail, addressed to him at his place of residence, or of his usual post office address.

*Tenth.* The board of State assessors will require a detailed and itemized statement of all expenses claimed by the respective parties, verified by affidavit proving the amount of such disbursements and charges and showing the necessity thereof before said board will proceed to certify the reasonable costs and expenses arising from and connected with said appeal. But the aggregate of all the expenses and counsel fees which may be certified to the appellant shall not exceed two thousand dollars, nor shall the aggregate of all the expenses and counsel fees which may be certified to the respondent exceed two thousand dollars.

*Eleventh.* When more than one appeal shall be pending in a county, brought by different supervisors, on behalf of different towns, wards or cities, said appeals shall all be heard at the same time and together.

*Twelfth.* Not more than one counsel will be heard on either side, on the final argument of the matter, unless for special reason then shown.

*Thirteenth.* Subpœnas will be furnished on request, by the State assessors, to either party.

Rules issued January 22, 1884.

## CHAPTER VIII.

### AUDITING OF ACCOUNTS.

- Sec. 428. Practice and principles governing.  
429-440. Rules governing the auditing of accounts.  
441. General form of accounts to be presented.  
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501. Election expenses.  
502. Stenographers.  
503. Stenographer for county court.  
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509. Counsel.  
510. Counsel to assist district attorney.  
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### § 428. Practice and Principles Governing.—

The general practice and principles governing the auditing of accounts, either by town or county boards of auditors, are the same, and are as follows:

§ 429. **First.** The powers of such boards are strictly limited by statute. They cannot admit and audit a claim upon any notion of their own of its equity; but are simply to admit and audit such claims *only* as are made by statute, expressly or by necessary implication, legal charges.

People v. Lawrence, 6 Hill, 244; Osterhoudt v. Rigney, 98 N. Y. 222.

When they transgress the limitations prescribed by statute their acts are void.  
Osterhoudt v. Rigney, 98 N. Y. 233.

### § 430. Second. Amount Fixed by Statute.—

When the amount of a charge is fixed by statute the board have no discretion over it, and must audit the claim according to such statute.

People, *ex rel.* Kinney, v. Supervisors of Cortland Co., 40 How. 53; 98 N. Y., *supra*, 232.

Where a salary is fixed by law which the board are required to audit and allow they have no discretion, and are liable to be fined for refusing so to do.

Morris v. People, 3 Denio, 381.

If a new duty be imposed upon an officer, since his salary was fixed, he is not entitled to additional pay therefor.

People, *ex rel.* Phoenix, v. Supervisors, 1 Hill, 362.

A person holding a public office has a *prima facie* right to the salary thereof, although he be physically disabled from performing his duties. If there be no law or regulation authorizing the discontinuance of the compensation during the disability, the only remedy is his removal.

Sleigh v. U. S., 9 Ct. Cl. 369; 5 Wait's Act. and Def. 20; People, *ex rel.* Ryan, v. French, 91 N. Y. 265; O'Leary v. Bd. of Education, 93 id. 1.

A salaried officer is not entitled to a *per diem* allowance for performing a new duty imposed upon him, even for Sunday labor.

Palmer v. Mayor, 2 Sandf. 318. See Baker v. City of Utica, 19 N. Y. 326; City of Poughkeepsie v. Wiltsee, 36 Hun, 270.

§ 431. **Third. If not Fixed by Statute.**—When the amount is not fixed by statute, but the claim is a *legal* charge, the board are to determine the amount,

*Id.*

However much the board may err in judgment, so long as it keeps within its jurisdiction and acts in good faith its audit cannot be overhauled, but is *final* both to the claimant and to the tax payer.

*Id.*; People, *ex rel.* Johnson, v. Supervisors, 45 N. Y. 196-9.

If they audit an account not legally chargeable, it is not only void, but may be disregarded by other town or county officers, and is not binding and conclusive upon a succeeding board.

Bd. of Suprs. of Richmond Co. v. Ellis, 59 N. Y. 620; id. (above).

The auditing of an improper item does not vitiate the whole levy of taxes.

Parish v. Golden, 35 N. Y. 462.

But a *mandamus* lies to annul the illegal item.

People, *ex rel.* Lawrence, v. Suprs., 73 N. Y. 173.

If it could not be ascertained what amount of the illegal claim was allowed, or whether the deduction was made therefrom, or from the items which the board had jurisdiction to audit, the whole audit will be vacated.

Osterhoudt v. Rigney, 98 N. Y. 222.

No court can audit a claim, or order the officer to pay it, unless some statute authorizes it so to do.

*In re* Tinsley, 90 N. Y. 231; People, *ex rel.* Johnson v. Bd. of Suprs., 45 id. 196, 200.

In all cases where the exercise of discretion is required, and the board is not satisfied with the sum charged, it is better, it is just, that notice be sent to the claimant with a request to appear and explain, before making a blind and arbitrary reduction of the account without evidence or knowledge to support their decision.

People, *ex rel.* Sherman, v. Supervisors, 30 How. 173.

In settling the amount if the claim is for any matter the price of which is fixed by law, by custom, by authority, or by contract with one having authority to contract on behalf of the county, the board have no discretion, but must settle or declare the amount according to such law, custom or contract.

Id.

An act of the legislature (Laws of 1867, chap. 938) "authorized and empowered" the boards of supervisors of certain counties therein mentioned to hear and determine claims for illegal assessments upon United States securities, and to repay the amount collected upon such assessments. *Held*, that the act was mandatory, and not merely permissive. And that, upon the presentation of a claim thereunder, the only questions to be determined by the board, and in reference to which it has any discretion, are whether the claimant has such a claim, and, if so, the amount thereof. That, when the fact of the existence of the claim is undisputed, the board has no authority to reject it as illegal; and it can be compelled, by *mandamus*, to exercise its discretion upon the facts, and the amount of the allowance.

People, *ex rel.* The Otsego County Bank, v. Supervisors of Otsego, 51 N. Y. 401; S. C., 53 Barb. 564.

The only subject upon which the judgment of the board of supervisors is to be exercised, in such a case, is whether it is established before them that bonds, stocks or national securities not subject to taxation have been taxed; and, if so, the amount so erroneously taxed and paid, and *who* is entitled to the repayment thereof.

People v. Supervisors of Herkimer, 56 Barb. 452.

The board act judicially in examining, settling and allowing accounts. This involves the right to receive evidence, hear, consider and determine the justice of the claim presented.

People, *ex rel.* Baldwin, v. Supervisors, 12 How. 204; People, *ex rel.* Brown, v. Supervisors of Herkimer Co., 3 How. (N. S.) 241; Osterhoudt v. Rigney, 98 N. Y. 222.

Under an act giving a marshal \$2 per day for each day actually and necessarily employed, he presented a claim for fifty-nine days; the board found and deter-



mined that he was not necessarily and actually employed fifty-nine days, but only forty days; *held*, the decision was a judicial determination which could not be reviewed on *mandamus*.

12 How. 204, *supra*.

It is the office of a common-law *certiorari* to review the determinations of a board of supervisors; and this remedy is proper in case such a board rejects, as not just or legal, a claim which the legislature has declared, by statute, to be just and legal, and directed the board to audit and allow. Although the court cannot, by *certiorari*, compel a performance of this duty, it can reverse the erroneous decision, leaving the party, in case of further refusal to perform its duty, to such further remedy, by *mandamus* or otherwise, as the law gives him.

People v. Supervisors of Madison, 51 N. Y. 442.

Where a tax upon the capital stock of a bank, including that portion invested in United States securities, was assessed, levied and paid prior to the decision of the supreme court of the United States, holding that the portion so invested was exempt from taxation; and where a claim was made to a board of supervisors, under the provisions of the act of 1867 (chap. 938) to provide against illegal taxation, for the repayment of that portion of the tax so illegally assessed, it was *held* that it was no answer to the claim that the claimant did not appear before the assessors and object to the assessment, or that it paid the tax voluntarily.

*Id.*

A county board of commissioners of excise has power to employ an attorney to conduct the prosecutions for penalties which they are authorized to institute; and as it acts as the agent of the county in so doing, the claim for such services is a county charge.

People v. Supervisors of Delaware, 45 N. Y. 196.

An account for such legal services must be presented to the board of supervisors, and must be audited and allowed by them; but the amount to be allowed, in the absence of express contract or statute, is somewhat in their discretion. If they are legally chargeable to the county, it is the duty of the board to audit them, and on their refusal, a *mandamus* is the proper remedy.

*Id.*

The auditing of a claim against the county of New York, by the board of supervisors, is an allowance of the claim, and when funds are provided for its payment, no further auditing is required. Such auditing is conclusive upon the board and their successors; and no subsequent board of supervisors will be authorized to require the same to be audited a second time.

People v. Green, 64 Barb. 162.

Where any body of men is directed, by law, to audit a claim, *it seems* that an order of the court, directing the amount at which such claim shall be allowed, would be improper; except in case of salaries and claims where the amount to be recovered is fixed by statute. In other cases, the board which is to audit must settle the amount to be allowed.

*Id.*

Where a bill is presented for services rendered to the county, the board of supervisors — unless the compensation for such services be fixed by law, authority, custom or binding contract — have to consider and pass upon the charges, and allow such sum as, in their judgment, is right and proper. In such cases they have a *discretion*, which will not be interfered with by a *mandamus* directing how that discretion shall be exercised.

People v. Supervisors of Cortland, 58 Barb. 139; S. C., 40 How. 53.

If the statute prescribes the sum to be received for such services, the board are required to allow the bill according to such statute. They have no discretion over it. If the sum is fixed by a binding contract, the board are equally bound to allow the bill in accordance therewith.

*Id.*

An individual having been employed by a county clerk or surrogate to do his printing, at an agreed price, such employment being within the scope of the clerk's or surrogate's authority, and the sum agreed to be paid being no more than a reasonable compensation for the services, the board of supervisors are not at liberty to interfere with such contract, but should cause to be levied and paid the amount due thereon.

Id.

The relator having done printing for the sheriff, at his request, but without any contract as to the price, such printing consisting of legal notices, required by law to be published, *held*, that he was entitled to charge therefor the sum allowed by law; and that the board of supervisors should have allowed him that amount, without any deduction.

Id.

Where the statute allows an individual to collect, for a service rendered the county, not more than a sum specified, he cannot be compelled to take less.

Id.

After a board of supervisors had passed upon an account presented by the relator, it caused to be made and delivered to him an order on the treasurer, for the payment of the amount allowed. The relator refused to receive it in full of his claim, and notified the person handing it to him that he should at once commence a proceeding to compel the board to allow him the balance claimed. He subsequently tendered back the order to the same person, who refused to receive it. He afterward received and retained the avails of the order. *Held*, that the relator was not *estopped*, by this act, from disputing the correctness of the action of the board.

Id.

The acceptance of the amount audited} precludes the claimant from further prosecuting the claim for the residue of the bill.

People, *ex rel.* McDonough, v. Supervisors, 33 Hun, 305; People, *ex rel.* Brown, v. Supervisors of Herkimer Co., 3 How. (N. S.) 241.

A legal claim against a county is not made so by its audit by the board of supervisors; what are and what are not county charges are settled by law; and when the board of supervisors determine the amount of the debt due from the county, resulting from services rendered or goods furnished which relate to a county charge, their decision is conclusive, inasmuch as they act judicially.

Whether a claim is a county charge depends upon facts; and, in a proper case, they may be inquired into upon issues raised on an alternative *mandamus* issued for the payment of the claim.

People, *ex rel.* Tracy, v. Green, 7 How. 382.

## § 432. Fourth. Accounts Must be Presented on, or Before, Some Certain Day.

"The supervisors of the counties of Onondaga, Tioga, Oneida, Fulton, Monroe, Broome, Delaware, Cayuga, Orange, Jefferson, Richmond, Livingston, Chenango, Chemung, Ulster, Dutchess, Steuben, Niagara, Columbia and Herkimer, by their clerks, shall provide boxes with suitable inscriptions thereon, and with openings in the top, to be kept in the offices of the clerks of said counties and in their charge under lock and key, in which shall be deposited, by said clerks, all accounts and claims against said counties, duly verified according to law; and whenever said boards shall severally for themselves order, the clerks of said boards shall take from said boxes all bills and accounts against said counties, which they shall then file and number, and *it shall not be lawful* for the said boards of supervisors, in any one year, to audit, as against said counties, *any other bill or account* than such as shall have been deposited in said boxes, or otherwise in their possession, *upon the morning of the fourth day* of the annual meeting of the

said boards, except bills for the services of supervisors, their clerks and janitors, and except bills for services or disbursements rendered or made during the session of the boards."

Laws of 1861, chap. 83, as amended by Laws of 1862, chap. 245.

See "Board of Town Auditors."

The clerks of the boards of supervisors of the several counties named in this act shall annually give notice, in at least two of the newspapers published in each of the said counties, of the time of holding the annual meeting of said boards in each year, to be inserted in said papers at least once in each week for four weeks previous to such meetings, and requiring all persons having bills or accounts against the said counties to deposit the same with the county clerk, duly verified, on or before the third day of the next annual meeting of said boards, and in default thereof, that such bills or accounts will not be audited by said annual meetings.

Laws of 1861, chap. 83, § 3.

Whenever the board of supervisors of any county of this State shall by resolution declare that the provisions of this act shall be extended and made applicable to such county, the provisions of this act shall thereafter be applicable to such county.

Id., as amended by Laws of 1862, chap. 245.

The above provision applies to all claims, whatever their form, which are required by law to be submitted to the supervisors for audit, save those specifically excepted. Thus a judgment, although a legal claim upon the county, must be so presented.

Burrows v. Monroe, 23 How. 395.

See "Town Auditors."

**§ 433. Fifth. Accounts Must be Properly Itemized and Verified.**—No account shall be audited by any board of town auditors or supervisors, or superintendents of the poor, for any services or disbursements, unless such account shall be made out in items and accompanied with an affidavit attached to and to be filed with such account, made by the person presenting or claiming the same, that the items of such account are correct, and that the disbursements and charges therein have been in fact made or rendered, or necessary to be made or rendered at that session of the board, and stating that no part thereof has been paid or satisfied; and the chairman of said board, or either of said superintendents, is hereby authorized to administer any oath required under this section.

Laws of 1845, chap. 180, as amended by Laws of 1847, chap. 490; L. R. S. 845.

Nothing in the preceding section shall be construed to prevent any such board from disallowing any account in whole or in part, when so rendered and verified, nor from requiring any other or further evidence of the truth and propriety thereof, as such board may think proper.

Id.

Unless the account is properly verified the board has no jurisdiction to act upon it.

*Osterhoudt v. Rigney*, 98 N. Y. 233; *Hawley [v. McIntyre]*, 24 Hun, 459; *People v. Supervisors of Monroe Co.*, 18 Barb. 567.

If an account is not properly verified it should be returned to the claimant with notice that he may appear and correct it.

*People, ex rel. Sherman, v. Supervisors of St. Lawrence Co.*, 30 How. 173; *People, ex rel. Brown, v. Supervisors of Herkimer Co.*, 3 How. (N. S.) 241.

Where a claim, consisting of separate items, is presented for audit \* \* \* it is the duty of the board to examine each of the items separately and allow or disallow the same accordingly as it shall be found correct or incorrect. It is error for the board in such a case to deduct a gross sum from the amount of the claim, without passing upon or specifically altering any of the items of which it is composed.

*People, ex rel. Thurston, v. Board of Town Auditors*, 20 Hun, 150.

The auditing board *must act specifically on each item* of the account presented. An arbitrary reduction from the gross amount of a bill for various services or items, is not an audit thereof.

*People, ex rel. Thurston, v. Board of Town Auditors*, 82 N. Y. 80.

**§ 434. Sixth.** If for *services* in which no specific compensation is fixed by law, a just and true statement, in writing, of the time actually and necessarily devoted to the performance of such services should also be produced.

All town and county officers, and all other persons who may present to the board of supervisors accounts for their services, to be audited and allowed, shall, before any such account or claim shall be passed upon or allowed, exhibit a just and true statement in writing of the nature of the service performed by them.

2 R. S. 978, § 1.

In all cases in which a specific compensation for any service is not provided by law, the officer or person presenting an account therefor shall also exhibit, in writing, a just and true statement of the time actually and necessarily devoted to the performance of such services.

*Id.*, § 2.

**§ 435. Seventh. The Account claimed Must be a Legal Charge.**—The *statute* defines what are “*legal charges*.”

As to towns, see “*Town Charges*.”

As to counties, see “*County Charges*.”

And does not include such demands as have their origin in “*torts*.”

*McClure v. Board of Supervisors*, 4 Abb. N. S. 202; *McClure v. Board of Supervisors*, 50 Barb. 594; *Howell v. City of Buffalo*, 15 N. Y. 512; *McGaffin v. City of Cohoes*, 74 id. 387; *Newman v. Supervisors of Livingston Co.*, 45 id. 676-689; *Quinlan v. City of Utica*, 11 Hun, 217; affirmed, 74 N. Y. 603.

A “*Tort*” is a private or civil wrong or injury. A wrong independent of contract.

Bouvier's Dict.

Such as damages from riots; injuries to person or property; the wrongful taking of property; injury to personal or real property; negligence and the like. The right of action therefor is generally founded, either upon:

- 1st. An invasion of some legal right of person or property; or
- 2d. On the violation of some duty toward the public, which has resulted in some damage to the plaintiff or claimant; or
- 3d. In the infraction of some private duty or obligation which has been productive of damage to the complaining party.

2 Wait's Law & Pr. 418.

The first two are the ones involved in town or county charges. Claims for torts ought not to be presented for audit.

Cases *supra*.

Ross v. Supervisors, 38 Hun, 20.

**§ 436. Eighth.** An account audited or rejected, *after a determination and decision* thereon, *on the merits*, cannot be audited or allowed by a subsequent board or by another board having concurrent jurisdiction.

Osterhoudt v. Rigney, 98 N. Y. 222.

**§ 437. Ninth.** Where a proper claim has been disallowed because not presented in proper *form*, or not properly verified or accompanied by proper vouchers, or for any reason not involving a determination *on the merits*, it may be audited by a subsequent board, or one of concurrent jurisdiction.

Id.

**§ 438. Tenth.** The *same* board can reconsider its action, on any claim, at any time during its session before final adjournment.

Id.; People, *ex rel.* Hotchkiss, v. Supervisors, 65 N. Y. 222.

**§ 439. Eleventh.** All accounts should be accompanied by proper vouchers and books of account.

**§ 440. Twelfth.** Where all the officers constituting the board have met, a majority of them may decide and their certificate will be sufficient, though one of the members has refused to sign it.

People, *ex rel.* Onderdonk, v. Supervisors, 1 Hill, 195.

It seems that when the board are properly formed, a majority of the members present could act.

Id. 200.

In the board of supervisors, certain questions require a majority of the quorum, others a majority or two-thirds of the members *elected*.

**§ 441. General Form of Accounts to be Presented.**—As accounts are to be filed and preserved, they should be properly made out on suitable-sized paper for filing and folding,

clearly written on only *one side of the sheet*, fully itemized, verified and handed in in due season.

Each account should explain itself.

In most counties large-sized bill paper, with the last column blank, is preferred.

#### THE TOWN OF

To JONES & HOWER.

Dr.

1885.

Feb. 21, 1207 lbs. broken rice, at six cents .....	\$72 42
May 12, 2400 lbs. imported beans, forty bushels, at \$2.15	86 00
June 10, 200 lbs. cod, at six cents .....	54 00
	<hr/>
	\$212 42
	<hr/>

Verification to be added, viz. .

ONEIDA COUNTY, ss.:

, being duly sworn, says that the items of the annexed account are correct; and that the disbursements and services charged therein have been in fact made or rendered; and that no part thereof has been paid or satisfied.

Sworn to before me,

, 188 ,

}

Signed ( .)

Forms for general accounts can be adapted from the above.

§ 442. *Special* forms are required for justices of the peace, constables, highway commissioners, overseers of the poor, railroad commissioners and supervisors.

See *post*,

### § 443. How Accounts Should be Audited.

#### 1. BY TOWN BOARDS.

They are

*First.* To examine and determine whether the account is properly verified and proper in form.

*Second.* If so, to see if it is properly chargeable against the town.

*Third.* To settle and fix its amount.

*Fourth.* Allow it as thus settled.

People, *ex rel.* Sherman, v. Supervisors, 30 How. 173.

See "Principles and Practice," *ante*.

#### 2. BY COUNTY BOARD.

In addition to the four requirements above mentioned, the county board must, *Fifth.* Provide means for its payment.

*Id.*

## § 444. Who are to Audit Accounts.

There are two boards for the auditing of accounts, viz.:

1st. The board of town auditors.

2d. The board of supervisors.

The acts of each board are governed by laws, which prescribe what their powers and duties are, and each is *limited* to the powers and duties so prescribed.

The "town charges" ought to be presented and audited by the board of town auditors. Such is the general practice and the evident intent and spirit of the law, while all county charges are acted on by the county board.

**§ 445. First.** In most of the counties the town board act under the following statute:

### LAWS OF 1840, CHAP. 305.

AN ACT in relation to the accounts of Town Officers.

#### *Board of Town Auditors.*

SECTION 1. The supervisor, town clerk, and justices of the peace, or any two of the said justices of the peace of the several towns in this State, shall constitute a board of town auditors for the purpose of auditing and allowing the accounts of all charges and claims payable by their respective towns.

#### *To Meet Annually.*

§ 2. The said board of auditors shall meet for the purpose of auditing and allowing such accounts annually in each town, at the place of holding the last town meeting, on the last Thursday preceding the annual meeting of the board of supervisors of the county.

Thus amended by Laws of 1844, chap. 288.

#### *To Make Certificates.*

§ 3. The said board shall make a certificate to be signed by a majority of said board, specifying the name of the person in whose name the account is drawn, the nature of the demand and the amount allowed, and shall cause a duplicate of said certificate to be made, one of which shall be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of the town, and the other shall be delivered to the supervisor of said town to be by him laid before the board of supervisors of his county at their annual meeting.

#### *Duty of Board of Supervisors.*

§ 4. The said board of supervisors are hereby authorized and directed to cause to be levied and raised upon said town the amount specified in said certificate in the same manner as they are now directed to levy and raise other town charges.

1 R. S. 835.

### LAWS OF 1860, CHAP. 58.

AN ACT conferring additional powers on boards of Town Auditors.

#### *Additional Powers of Town Auditors.*

SECTION 1. The board of town auditors of the several towns of this State, in addition to the authority now vested in such board, shall have the power and, it shall be their duty at their annual meeting to audit the accounts of the justices

of the peace and constables for fees in criminal cases, which are by law chargeable to any such town, and the amount thereof shall be included in their certificate and assessed by the board of supervisors of the county upon such town, in the same manner as other town charges are now assessed and collected.

Thus amended by Laws of 1866, chap. 832.

*Repeal.*

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

1 R. S. 835.

LAWS OF 1863, CHAP. 172.

AN ACT in relation to the accounts of Town Officers.

*Duty of Town Auditors.*

SECTION 1. The town auditors in the several towns of this State shall examine the accounts of the overseers of the poor and the commissioners of highways of such town, for all moneys received and disbursed by them, and shall meet for the purpose of examining the same, annually, in each town of this State, on the Tuesday preceding the annual town meeting to be held in each town.

*Certain Officers to Account for Moneys.*

§ 2. The commissioners of highways in each town of this State, and all town officers who receive or disburse any moneys belonging to their respective towns shall, on the last Tuesday preceding the annual town meeting of their town, account with the board of town officers of such town for all moneys received and disbursed by them by virtue of their offices.

*Auditors to State Account.*

§ 3. The said board of town auditors shall make a statement of such accounts and append thereto a certificate to be signed by a majority of the board, showing the state of the accounts of the said highway commissioners and other officers at the date of the certificate; which statement and certificate shall be filed with the town clerk of the town, and be by him produced at the next annual town meeting, and publicly read.

1 R. S. 836.

LAWS OF 1866, CHAP. 832.

AN ACT to amend an act entitled "An act conferring additional powers on boards of Town Auditors," passed March third, eighteen hundred and sixty.

*Appeal to Supervisors of County.*

§ 2. In every case where any account of a \* \* \* town constable, for fees in criminal cases, is audited by a board of town auditors of any town, any tax payer of said town may appeal from such auditing and allowance to the board of supervisors of the county, and such board of supervisors shall thereupon have power to audit and allow such bill; and in case any such account shall be disallowed or the amount thereof reduced, the party presenting the same shall have the same right of appeal as above provided.

As to justices, see Laws of 1860, 1866, *ante* and Laws of 1869, chap. 855 below.

*Within what Time to be Taken.*

§ 3. Such appeal shall be taken within five days after the allowance or disallowance of a bill by such town auditors, in whole or in part, by the service of a



notice of appeal in writing on the town clerk, and said town clerk shall forthwith thereafter transmit said bill to the board of supervisors of said county to be audited and allowed by them, and said board of town auditors shall have no further jurisdiction over any such bill after the service of said notice of appeal.

*When Bill not to be Levied, etc.*

§ 4. If after service of any notice of appeal, the bill is not transmitted to the board of supervisors, as herein provided, no part thereof shall be levied or collected.

*Collected by Tax.*

§ 5. Such part of the town bills audited by the board of supervisors after such appeals as shall be allowed, shall be assessed, levied and collected by the said board in the same manner as other town charges.

§ 1 is set forth in Laws of 1860, chap. 58, *ante*; Laws of 1869, chap. 855; 1 R. S. 836.

The bills rendered by justices of the peace for services in criminal proceedings shall, in all cases, contain the name and residence of the complainant, the offense charged, the action of the justice on such complaint, the constable or officer to whom any warrant on such complaint was delivered, and whether the person charged was or was not arrested, and whether an examination was waived or had and witnesses swore thereon; and the account shall also show the final action of the justice in the premises. At any time within fifteen days after the board of town auditors of any town shall have filed with the town clerk thereof, the certificate of accounts audited as required by law, any tax payer of said town may appeal from the action of said board of town auditors, in auditing the account of any justice of the peace, to the board of supervisors of the county. Said appeal shall be made by serving notice thereof, in writing, on the town clerk of the town, and on the clerk of the board of supervisors, within the time above limited. The said supervisors shall thereupon audit the accounts of such justices of the peace, and their decision in the auditing and allowing of said accounts shall be final.

Laws of 1869, chap. 855, § 6, as amended by Laws of 1871, chap. 274.

The statutes of 1840, 1860, 1863, 1866 and 1869 contain all the provisions of the Revised Statutes, and the latter are, therefore, omitted.

**§ 446. Second.** Some few towns, viz.: Ausable, Champlain, Peru and Plattsburgh in Clinton county; Lenox in Madison county; Queensbury, Chester and Caldwell in Warren county, and the county of Essex, are acting under chapter 180, Laws of 1875, which provides for the election of three town auditors, who form the board of town auditors, having all the powers conferred by the laws above set forth.

All bills and claims in towns acting under this law of 1875 must be presented on the *first* day of the session of the town board.

**§ 447. Third.** In 1886, another statute was passed, by which the electors of any town *may* determine, by ballot, to elect a board of town auditors.

See Laws of 1886, chap. 585.

**§ 448. Fourth.** Some cities and counties also have special acts on this subject.

The principles governing the auditing of accounts are the same, under which ever law the board may be acting, and are given above.

## THE BOARD OF TOWN AUDITORS.

§ 449. **Who Compose the Board.**—In towns acting under the statutes enumerated under “first,” *supra*, the supervisor, town clerk, justices of the peace, or any two of said justices, constitute the board of town auditors as to all accounts except that of the supervisors. The latter account is audited as follows :

§ 450. **Auditors of Supervisor's Account.**—The justices of the town, or a majority of them, and the town clerk shall, on the Tuesday preceding the annual town meeting in each year, examine and audit the accounts of the supervisor, for moneys received and disbursed by him. The accounts so audited shall be filed in the office of the town clerk, as above provided.

1 R. S. 835, § 49.

On Tuesday preceding the annual town meeting, the supervisor must account with the justice of the peace and town clerk of the town for the disbursement of all moneys received by him.

At every such accounting the justices and town clerk shall enter a certificate in the supervisor's book of accounts, showing the state of his accounts at the date of the certificate. If any supervisor shall neglect to account or shall render a false account, or shall convert to his own use any money or securities which may come to his hands by virtue of his office, proceedings may be commenced against him in the name of the town of which he is supervisor, in the supreme court, by action or otherwise, by the justices of the peace and town clerk of said town, to compel him to render such account, or to recover any money or property of the town which he has not duly accounted for.

1 R. S. 826, 827, §§ 4 and 5.

For form of keeping the supervisor's books and certificate to be entered therein, see *ante*, §§ 39, 40.

§ 451. **When to Meet.**—There are two meetings provided for, viz. :

*First.* — On the Tuesday preceding the annual town meeting, the board meet to audit the following accounts :

A. The supervisor's account.

See next section above.

B. The accounts of the overseers of the poor and the commissioners of highways, and *all* other town officers who receive or disburse any moneys belonging to the town.

**§ 452. Accounts of Overseers of the Poor.—**

In those counties where there are no county poor-houses established, the overseers of the poor of the respective towns shall enter, in books to be provided at the expense of their towns, an account of all matters transacted by them relating to their official duties; of all moneys received by them, specifying from whom, and on what account; of all moneys laid out and disbursed by them; to whom and by what authority, and specifying in each case whether to county poor or to town poor; the names of all persons applying for relief, and ordered to be relieved as aforesaid; the day and year when they were admitted to have relief; the weekly or other sums of moneys allowed for that purpose, and the cause of giving such relief.

3 R. S. 1864, § 51.

For accounting in counties acting under the Livingston county law, see that law below.

On the Tuesday next preceding the annual town meeting of every town, the overseers of the poor shall lay the said original books before the board of town auditors, together with a just and true account of all moneys by them received and expended for the use of the poor, and in what manner, together with an account of the earnings of the poor persons by them employed; which accounts shall be verified by the oaths of the overseers, and shall be filed with the town clerk. The board of town auditors shall compare the said account with the entries in the poor books aforesaid; shall examine the vouchers in support thereof, and shall audit and settle the same, and state the balance due from such overseers, or to them, as the case may be. No credit shall be allowed to any overseer for moneys paid, unless it shall appear that such payment was made pursuant to a legal order.

Id., § 52.

Every person who, having been an overseer of the poor, shall refuse or neglect to present such original books, or to exhibit such accounts, to the board of town auditors, as required in the last section, shall forfeit the sum of \$250, to be recovered by and in the name of the overseers of the poor of such town.

Id., § 53.

See "Form of Account," *post*, § 454.

## The Livingston County Poor Law.

LAWS OF 1845, CHAP. 334.

AN ACT in relation to the temporary relief of the poor in the county of Livingston, and such other counties as may adopt the provisions of this act.

### *Towns in which Persons Relieved Reside, to Pay Expenses.*

SECTION 1. The expenses which shall be incurred in the relief or support of indigent persons entitled thereto by law, in the county of Livingston, before removing such persons to the county poor-house of such county, pursuant to the provisions of the Revised Statutes for the relief and support of indigent persons, including the charges of overseers of the poor for services rendered in providing for such relief and support (but not the expense of such removal), shall be a charge upon the towns in which the persons so relieved or supported shall respectively be.

§ 2. The overseers of the poor of said county shall provide for such relief or support, pursuant to the order of a justice of the peace, to be obtained in the manner provided by the forty-sixth section of the Revised Statutes above mentioned, except for medical services to an amount not exceeding five dollars, for which no order shall be required, until such person shall be removed to the county poor-house of such county, or until the necessity for any further expenditure shall cease; and it shall not be necessary to obtain the sanction of a superintendent of the poor to authorize the expenditure of a greater sum than ten dollars for the relief of any one poor person or family. Provided that such orders granted pursuant to this section shall be granted without fee or reward.

§ 3. The overseers of the poor shall keep a book, to be procured at the expense of the town, in which they shall enter the name, age, sex and native country of every poor person who shall be relieved or supported by them, together with a statement of the causes, either direct or indirect, which shall have operated to render such person a pauper, so far as the same can be ascertained. They shall also enter in such book a statement of all moneys received by them, when, and from whom, and on what account received, and of all moneys paid out by them, when, and to whom paid, and on what authority.

### *Book to be Laid Before the Town Auditors.*

§ 4. On the Tuesday next preceding the annual town meeting, in every year, and also on the Thursday next preceding the annual meeting of the board of supervisors of such county in every year, the overseers of the poor shall lay the said book before the board of town auditors, together with a just and true account of all moneys received and expended by them for the use of the poor since the last preceding meeting of the said board of town auditors. The said board of auditors shall compare said account with the entries in the poor book aforesaid, and shall examine the vouchers in support thereof, and audit and settle the same, and state the balance due from the overseers, or to them, as the case may be. The said account shall be filed with the town clerk; and at every annual town meeting, the town clerk shall produce such poor accounts for the then preceding year, and read the same if required by the meeting.

### *Accounts, How Audited.*

§ 5. The accounts of overseers of the poor for their services in affording the relief and support mentioned in this act shall be audited, certified, levied, collected and paid in the manner now provided by law in respect to other town accounts.

### *Town Auditors to Certify the Names, Ages, etc., of Persons Relieved.*

§ 6. At the annual meeting of the board of town auditors on the Thursday preceding the annual meeting of the board of supervisors, the said board of town auditors shall make a certificate to be signed by a majority of the board specifying

ing the name, age, sex and native country of every person who shall have been relieved or supported by the overseers of the poor during the then preceding year, and stating the causes, either direct or indirect, which shall have operated to render such person a pauper, and the amount of money expended for the use of each and every person so relieved or supported as allowed by the board of auditors; together with the amount allowed to each overseer for services rendered in relation to the temporary relief of the poor as aforesaid; which certificate the said board of auditors shall cause to be delivered to the superintendents of the poor of such county, or one of them, on or before the first day of December then next.

*Estimate to be Made of Amount Necessary for Next Year.*

§ 7. The board of town auditors shall also at their annual meeting mentioned in the last preceding section, make an estimate, to be signed by a majority of the board, of the sum which they shall deem necessary for the temporary relief and support of the poor the ensuing year, and to supply any deficiency in the preceding year, and shall cause the said estimate to be laid before the board of supervisors of such county, on the first day of their then next annual meeting. The board of supervisors shall cause the said sum to be levied and collected in the town where the same was estimated to be necessary as aforesaid, in the manner now provided by law in respect to other town charges, and to be paid to the overseers of the poor of such town.

§ 8. It shall be the duty of the board of supervisors of such county to examine the accounts of the superintendents of the poor and audit the same.

3 R. S. 1871.

In these latter counties the statutes provide that relief shall be furnished (except for medical services not exceeding \$5), *only upon an order of a justice of the peace.*

*Osterhoudt v. Rigney*, 98 N. Y. 237.

In other counties it seems to prescribe that no credit shall be allowed overseers of the poor, unless it shall appear that such payment was made pursuant to a legal order of a justice of the peace.

*Id.*, § 233.

except where only *one* overseer is elected in the town; such overseer seems to be vested with the discretionary right to expend not exceeding \$10 for the relief of one poor person or family.

Laws of 1845, chap. 180, § 1. See *ante*, § 62A.

## § 453. Account of the Overseer of the Poor, Under the Livingston County Poor Law.

Account of the overseer of the poor of the town of \_\_\_\_\_, of moneys received and expended, together with the name, age, sex, native country, and cause of pauperism of each poor person relieved or supported by them.

NAMES OF PAUPERS.	Age.	Sex.	Place of nativity.	Cause of pauperism.	Date of order for relief.	Amount ex- pended for each pauper.
Jane Gibson....	29	Female.	United States..	Idiocy.....	January 1, 1846...	\$25 41
J. Fay.....	68	Male....	England.....	Disease.....	December 3, 1846.	13 63
P. O'Rafferty...	45	Male....	Ireland.....	Intemperance.	January 3, 1847...	6 75
Mary Kelly....	1	Female..	Upper Canada..	do. of parents.	February 4, 1846..	12 25
Fanny Wright..	44	Female..	United States..	Debauchery...	February 7, 1847..	15 88
James Cook....	4	Male....	United States..	Illegit. child..	March 2, 1847....	8 75

## FORM OF ACCOUNT TO BE KEPT BY OVERSEERS.

Amount of moneys received.	When received.	From whom.	On what account.	Amount of moneys paid out.	When.	To whom.	On what authority.
\$10 00 12 50	June 10, 18 .. Sept., 18 ..	County treasurer. E. F. ....	For temporary relief..... From the sale of the per- sonal property of G. H. who had absconded....	\$10 00 12 50	June 15, 18 .. Sept., 18 ..	A. B..... County treasurer.	By order of C. D., jus- tice of the peace.  Pursuant to section 20 of title 1 of chapter 20 of part 1 of the Revised Statutes.

**§ 454. Account of Highway Commissioners.**

—The commissioners of highways of each town shall render to the board of town auditors, at their annual meeting for auditing the accounts of town officers, an account in writing, stating,

1. The labor assessed and performed in such town.
2. The sums received by such commissioners for fines and commutations, and all other moneys received under this chapter or from any source; also itemized accounts of all moneys paid out during the year, receipted in full by the respective parties to whom such money was paid.
3. The improvements which have been made on the roads and bridges in their town during the year immediately preceding such report, and an account of the state of such roads and bridges; and,
4. A statement of the improvements necessary to be made on such roads and bridges, and an estimate of the probable expense of making such improvements beyond what the labor to be assessed in that year will accomplish.

2 R. S. 1213, as amended by Laws of 1884, chap. 396.

See form below.

**ANNUAL ACCOUNT OF COMMISSIONER OF HIGHWAYS.**

The undersigned, commissioner of highways of the town of Trenton, in the county of Oneida, hereby renders to the board of auditors of said town his annual account for the year ending February 1, 1886.

1. The highway labor assessed in said town for the year ending on the said first day of February was *seven hundred and ten* days, and the highway labor performed in said town during the said year was *five hundred and eighty-nine* days; as appears by the account rendered us by the several overseers of highways in said town.

2. The said commissioner has received during the said year the following sums of money for fines and commutations, under the statute relative to highways, to-wit:

Date.	From whom received.	On what account.	Amount.

He has also received from other sources under said statute, or from any other source, as follows:

Date.	From whom received.	On what account.	Amount.

3. The following is an itemized account of all moneys paid out during the year, receipted in full by the respective parties to whom such money was paid, which said receipts are herewith presented.

Date.	To whom paid.	On what account.	No. of voucher.	Amount.

4. The improvements which have been made on the roads and bridges in said town during the said year are as follows: (*specify improvements.*) And the roads and bridges in said town are (*give state of them and specify whether they are in good repair or otherwise.*)

5. The following improvements are necessary to be made on the roads and bridges in said town, to-wit: (*specify necessary improvements.*)

6. The probable expense of making such improvements, beyond what the labor assessed in this year will accomplish, is by me estimated at \$1,000.

(Signed),

JEROME B. WATKINS,

HIGHWAY COMMISSIONER.

Dated , 1885.

**§ 455. Auditors to State Account.**—The said board of town auditors shall make a statement of such accounts, and append thereto a certificate, to be signed by a majority of the board, showing the state of the accounts of the said highway commissioners and other officers at the date of the certificate; which statement and certificate shall be filed with the town clerk of the town, and be by him produced at the next annual town meeting, and publicly read.

Laws of 1863, chap. 172, § 2; 1 R. S. 886.



## FORM OF STATEMENT.

ONEIDA COUNTY, }  
TOWN OF , } ss.:

We, the undersigned, composing the board of town auditors of said town, do hereby certify that we have this day examined and audited the accounts and vouchers of the town officers who have received or disbursed any moneys belonging to said town during the year last past, and that the state of the accounts of said officers is as follows:

## 1. SUPERVISOR — A STATEMENT OF THE ACCOUNT OF SUPERVISOR.

NAME OF FUND.	Receipts.	Disbursements.	Amount on hand.
Poor fund.....	\$600 00	\$500 00	\$100 00
Dog fund.....	100 00	90 00	10 00
School moneys.....	1,000 00	1,000 00	.....
Local school fund.....	505 00	5 00	500 00
Total.....	<u>\$2,205 00</u>	<u>\$1,595 00</u>	<u>\$610 00</u>

(And so on with each officer.)

(Signed)

A. B.,  
SUPERVISOR.

C. D.,  
TOWN CLERK.

E. F.,

G. H.,

J. K.,

JUSTICES OF THE PEACE.

**§ 456. Second.** On the Thursday preceding the annual meeting of the board of supervisors.

On this day the board of town auditors meet for the purpose of auditing and allowing the accounts of all charges and claims payable by their town.

No notice thereof is necessary to be posted. It would be well to post some public notice so that claims may be presented properly.

**§ 457. Town Charges.** — The following shall be deemed town charges :

1. The compensation of town officers for services rendered for their respective towns ;

But no town officer shall be allowed any *per diem* compensation for services, unless *expressly* provided by law.

Laws of 1845, chap. 180, § 23.

2. The contingent expenses necessarily incurred for the use and benefit of the town ;

3. The moneys authorized to be raised by the vote of a town meeting, for any town purpose ; and,

4. Every sum directed by law to be raised for any town purpose ;

1 R. S. 841.

The accounts of the members of the board of town auditors for services are town charges and audited by the town board ;

So are

The accounts of the assessors ;

The per diem allowance of overseers of the poor in performing their duties ;

The charges of highway commissioners for their *services* ;

The claims of inspectors of election for services ;

Judgments against the town for defective highways and bridges ;

Laws of 1881, chap. 700.

The railroad commissioners' services ;

Laws of 1869, chap. 907, § 3.

The excise commissioners' compensation except in counties where all the poor are a county charge ;

Laws of 1874, chap. 444.

The expenses of school books for indigent pupils ;

Laws of 1874, chap. 421, § 6.

The pay of town officers acting at election, printing and posting articles of election are town charges ;

Election Code, § 157.

All expenses of the board of health incurred in the execution and performance of the duties imposed by chapter 270, Laws of 1885 ;

See Laws of 1885, chap. 270, § 5.

But the taxable property of an incorporated village which comprises parts of several towns or less than a whole town, while maintaining its own board of health, is not subject to taxation for maintaining any town board or boards of health, or for any expenditures by such town boards.

Id., § 7.

Insuring town buildings a town charge.

Laws of 1847, chap. 294.

## **§ 458. To Audit Accounts for Repair of Roads and Bridges.**

By the act of 1858 (chap. 103, as amended in 1865, chap. 442), entitled " An act to provide for the speedy construction and repair of roads and bridges, where the same shall have been damaged or destroyed," it is provided, that

In case any road or roads, bridge or bridges shall be damaged or destroyed by the elements or otherwise, after any town meeting shall have been held, and since the 15th day of February, A. D. 1865, then and in that case it shall be lawful for the commissioner or commissioners of highways, by and with the consent of the board of town auditors, or a majority thereof, of the town or towns in which such road or roads, bridge or bridges shall be situated, to cause the same to be immediately repaired or rebuilt, although the expenditure of money required may exceed the sum now authorized to be raised by law upon the taxable property of the town or towns for such purposes; and the commissioners of highways shall present the proper vouchers for the expense thereof to the town audit-

ors, at their next annual meeting, and the said bill shall be audited by them, and the amount audited thereon shall be collected in the same manner as amounts voted at town meetings as now required. The commissioners acting under this act shall be entitled to receive, for each day's service actually rendered, \$2.

The board of town auditors may be convened in special session by the supervisor, or, in his absence, the town clerk, upon the written request of any commissioner of highways, and the bills and expenses incurred in the erection or repairs of any such roads or bridges, may then be presented to and audited by such board of town auditors; and the supervisor and town clerk shall issue a certificate, to be subscribed by them, setting forth the amount so audited and allowed, and in whose favor, and the nature of the work done and material furnished; and such certificate shall bear interest from its date, and the amount thereof, with interest, shall be levied and collected in the same manner as other town expenses.

No account for services rendered or material furnished according to the provisions of this act shall be allowed by such board, unless the same shall be accompanied by the affidavit of the party or parties performing such labor or furnishing such material, nor unless the commissioner or commissioners shall certify that such service has been actually performed, and such material was actually furnished, and that the same was so performed or furnished by the request of said commissioner or commissioners, and such board of auditors may require and take such other proof as they may deem proper to establish any claim for such labor and material and the value therefor.

2 R. S. 1218.

## DOGS, SHEEP KILLED BY, IN COUNTIES ACTING UNDER "ONTARIO COUNTY LAW."

### § 459. To Audit Accounts for Sheep Killed by Dogs.

The owner or owners of any sheep or lambs that may be killed or injured by dogs may apply to any two fence viewers of the town, who shall inquire into the matter and examine witnesses in relation thereto, for which purpose either of them shall have power to administer oaths, and if they shall be satisfied that the same were killed by dogs, and in no other way, they shall certify such fact, the number of such sheep killed and the number injured, the value of such sheep killed or injured immediately previous to such killing or injury, together with the value of the sheep after being so killed or injured, together with the amount of their fees.

Laws of 1864, chap. 197, § 3; 3 R. S. 2120.

Such certificate shall be presented to the board of town auditors at their annual meeting for auditing town accounts, who shall have the same power in auditing or allowing the same as in regard to town accounts; and if such board shall be satisfied, by the oath of the person claiming such damages, that such claimant has not been able to discover the owner or possessor of the dog or dogs by which such damage was done, or that he has failed to recover his damages of such owner or possessor, they shall give an order on the supervisor of the town for the amount which they shall allow, who shall pay such order out of the funds arising from the provisions of this act.

Id., § 4.

If, after receiving the amount of such damages from the supervisor, the owner of the sheep so killed or hurt shall receive or recover the value thereof from the owner or possessor of the dog or dogs doing such damage, he shall refund and repay to the supervisor the sum so recovered, for which it shall be the duty of the supervisor of the town to bring an action against such person, in case of his re-

fusal, in his name of office; which sum, when so received and recovered, shall be returned to said dog fund.

Id., § 6.

The supervisor is hereby required to account to the town auditors for moneys received and disbursed by him in pursuance of this act

Id., § 7.

Whenever the board of supervisors of any county of this State shall, by resolution, declare that the provisions of this act shall be extended and made applicable to said county, the provisions of this act shall thereafter be applicable to such county.

Id., § 7.

In counties where the board of supervisors have adopted the act of 1864, if the amount of town audits for sheep damage shall exceed the amount of the dog fund in the supervisor's hands, the board of supervisors may add such excess to the accounts of the town, but not to exceed the amount theretofore received into and diverted from the dog fund for road, bridge and contingent purposes for three years next preceding.

Id., § 5.

## § 460. Justices of the Peace and Constables' Fees in Criminal Cases Chargeable to a Town.

—The fees of justices of the peace and of constables, for all fees *chargeable to a town*, in criminal cases, are town charges and to be audited by the board of town auditors.

*No account of a justice of the peace or of a constable for services and fees in criminal cases chargeable to a town, ought to be audited by the board of supervisors against any town, except upon an appeal duly brought before them.*

The only officials having the right to audit these two kinds of accounts against a town are the town auditors.

As to all other accounts against a town or "town charges" so called, the board of supervisors seem to have concurrent jurisdiction with the board of town auditors to audit town charges, except in some cities and counties working under special laws.

The reasons for this statement of the law may be found in "Note A," at the end of this book.

## § 461. Form of Justice's Account.

THE TOWN OF..... :

To.....Justice of the Peace, Dr.  
who resides at.....town of ..

The People

vs.

), Defendant.

Complainant's name was .....  
Complainant resides at.....town of.....  
Offense charged was.....  
On the information filed I issued a.....

(Giving the action of justice in the matter.)

Warrant was delivered to.....Constable  
 The defendant was.....arrested  
 An examination of defendant was.....had

Witnesses sworn on such examination were as follows:

.....  
 .....  
 .....  
 .....  
 .....  
 .....

Defendant was.....

*(Giving final action of justice in the matter.)*

To administering.....oaths, at 10c.....	—
drawing an information.....	.25
taking deposition of.....witnesses on information.....	—
issuing warrant of arrest.....	.25
indorsing warrant from county of.....	.25
warrant of commitment.....	.25
subpoena.....	.25
.....copies of subpoena for service, at 10c.....	—
filing.....	—
filing.....copy of.....folios, at 5c.....	—
certificate.....	—
drawing undertaking of bail.....	.25
taking.....acknowledgment.....	—
.....days' attendance in hearing or examination.....	—
.....necessary adjournments.....	—
venire.....	.25
swearing.....witnesses, at 10c.....	—
swearing jury.....	.25

*(And so on with each item.)*

Total.....\$ —

STATE OF NEW YORK, } ss.:  
 ONEIDA COUNTY, }

.....being duly sworn, says that he is the claimant above named; that the items of such account above set forth are correct and that the services charged therein have been in fact made or rendered or necessary to be made or rendered; that no part thereof has been presented to any preceding board of audit for audit, and no part thereof has been paid or satisfied.

(Signed) ... ..

Sworn to before me this.....day  
 of.....188..  
 .....  
 .....  
 ONEIDA COUNTY, N. Y. }

The account *must* be presented to the board of town auditors. The board of supervisors have no right to audit such account, or any part thereof, against a town — except on appeal.

## § 462.

## FORM OF CONSTABLES' ACCOUNTS.

THE TOWN OF.....:

To..... Constable, Dr.  
 Residence.....

The People

vs.

A. B.

Warrant issued by.....  
 Offense charged.....  
 Offense committed in town of.....  
 Defendant arrested at.....  
 Distance actually and necessarily traveled to arrest said defendant going from  
 .....to.....and returning.....miles.....  
 To serving (insert name of precept served) on said defendant at.....  
 To taking said defendant into custody on *mittimus*.....  
 To.....miles traveled in going from.....to (Utica or Rome jail,  
 as the case may be) in order to deliver said defendant.  
 To taking charge of jury.  
 To keeping prisoners .....days.  
 To notifying complainant, complainant's name was.....  
 and he resides at.....  
 The services herein were rendered by the direction of.....  
 The said defendant was (discharged or committed or bailed as the case may be) by  
 said magistrate.

Travel fees are to be computed from the place where mandate or process is served or executed, to the place where it is returnable unless a different rate is specially prescribed by statute; where two or more mandates are served or executed in one special proceeding, or against two or more persons in one action or proceeding, the constable is entitled, in all, to only ten cents for each mile necessarily traveled.

Code of Civ. Pro., §§ 3322 and 3323.

A constable, who charges any traveling fees, *must show by affidavit* that the travel was necessary to perform the service with respect to which it is charged; that no more miles are charged for than were actually and in good faith traveled for that purpose; that he had, at the time, no other official or private business upon the route so traveled, and that the traveling fees are charged upon one mandate only, which must be attached or described in the affidavit.

Id., § 3324.

The above section probably relates to civil cases. There was formerly a particular form of affidavit required in criminal cases by chapter 820, Laws of 1869, which act has since been repealed.

People, *ex rel.* Millspaugh, v. Town Auditors, 1 How. (N. S.) 226.

## FORM OF ACCOUNT FOR SERVICE OF SUBPŒNA.

The People

vs.

A. B.

Subpœna issued by.....  
 Offense charged was.....

Number of names in precept.....  
 Number of persons upon whom served.....  
 Place where each witness was served was as follows:

.....  
 .....  
 .....  
 .....  
 .....  
 .....

Number of miles actually traveled to make such services, going and returning,  
 and not separate mileage for each witness.....  
 Notifying complainant.....  
 Precept returned to.....  
 Offense was committed in town of.....at.....

STATE OF NEW YORK, }  
 ONEIDA COUNTY, } ss.:

I (*insert name of person making the affidavit*), being duly sworn, do depose and say:

That the items of the foregoing account are correct, and that said account, or any part thereof, has not been presented by me or by any one in my behalf to any preceding board of auditors for audit; that the disbursements and services charged therein have been in fact made or rendered, and that no part thereof has been paid or satisfied; that the travel charged in serving the process in each of the above-entitled cases was necessary on the process on which it was charged, and that no more miles are charged for than were actually and in good faith traveled on the execution of such process; that at the time I executed said process I had no other private official business on such traveled route, and that the charge for going and returning is made only upon one process, which process is attached or described in this account and affidavit.

(Signed) .....

Sworn to before me, this.....day }  
 of....., 188.. }  
 C. D., }  
 JUSTICE OF THE PEACE, ONEIDA COUNTY, N. Y. }

### § 463. Statement With Account as to Services.

TO THE HONORABLE THE BOARD OF TOWN AUDITORS:

The undersigned, J. D., hereby presents a just and true statement of the nature of the services performed by him, and of the time actually and necessarily devoted to the performance of such services, on which such account is based (*give detailed statement*).

Dated, etc.

(Signed.)

RENSSELAER COUNTY, ss.:

J. D., the person named in the foregoing statement, being duly sworn, says, that the foregoing statement is a just and true account of the matters therein set forth.

Sworn before me, etc.

(Signed.)

**§ 464. Costs.**—In an action or a special proceeding brought in the name of the people to recover money, or property, or to establish a right or claim, for the benefit of a city or town, if costs be awarded the defendant they are a town charge.

Laws of 1832, chap. 246; 3 R. S. 2463; Code of Civ. Pro., § 3243.

## **§ 465. Town Bonds.**

### **RAILROAD COMMISSIONERS' DUTY.**

The commissioners appointed under and by virtue of the several acts to facilitate the construction of railroads in this State \* \* \* are hereby required to present before the board of auditors of their respective towns, cities or villages whose duty it is annually to examine and audit the receipts and disbursements of either town, city or village officers, at each annual meeting of said boards of town auditors or the auditing board in any city or village, all such bonds and coupons thereof which have been paid by them respectively during the year then ending; also to render a written statement or report, annually, to said board, showing in items all their receipts and expenditures, with vouchers, \* \* \* all interest or earnings accruing from loans or deposits shall be credited to their respective towns, cities or villages and accounted for in their annual settlements with said boards of auditors.

Laws of 1871, chap. 537, as amended by Laws of 1882, chap. 293, § 1; 1 R. S. 877.

It is their duty to loan on proper security or collaterals, or deposit in some solvent bank or banking institution, at the best rate of interest they may be able to obtain, or invest in the bonds of their respective towns, all moneys that shall come into their hands by virtue of their office and not needed for current liabilities.

*Id.*

For form of report, see *ante*, § 59.

## **§ 466. Cancellation of Bonds and Coupons.**

It shall be the duty of the several boards of town auditors, or any auditing board in the cities or villages of this State, before whom such bonds or coupons thereof may be presented in pursuance of section 1 of this act, to cancel the same by cutting out a portion of each bond or coupon so presented, in such manner as to effectually prevent the repayment of the same.

*Id.*, § 2.

All bonds and coupons so presented and canceled shall be deposited for safe-keeping and future reference in the office of the clerk of the county in which such towns, etc., are respectively situated, and said board of town auditors, etc., shall prepare and sign a certificate, showing a full description of all bonds or coupons so canceled and deposited by them, and shall file said certificate in the office of the clerk of their respective towns and villages, and in cities in the office of the clerk of the city.

*Id.*, § 3.

## **§ 467. Commissioners to Keep Records, Pay Bonds, etc.**

The commissioners are required to pay the principal and interest of said bonds at maturity, and to cancel the bonds and interest coupons by cutting out a portion thereof; to keep a full record of all bonds and interest coupons paid and canceled, which record shall be at all times open to the inspection of the supervisor, mem-



bers of the board of town auditors and justices of the peace, or the members of common councils, or trustees of cities or villages; to report in writing to the board of town auditors, at their annual meeting, and to the common council or trustees of cities or villages on April 1 of each year, the date, number and amount of all bonds and interest coupons paid by them and canceled during the past year and since their last report, and shall, at the same time and place, produce and deliver to said boards said bonds and coupons canceled by them, taking a receipt therefor, which shall set forth the date, number and amount of each bond or coupon; to file with the town clerk a duplicate thereof. Said boards are required to indorse upon said report received by them from the commissioners, that the said bonds and coupons mentioned therein, duly canceled, were so received, and if all or any of them are not so received, so state in the indorsement, and then deposit said canceled bonds and coupons, with their report, in the county clerk's office.

Laws of 1877, chap. 349, § 4; 1 R. S. 881, § 4.

The above section does not apply to or affect the town of Orleans in Jefferson county, or any officer thereof, or any money raised by tax on the property therein, or to any bonds except such as were given under the act of April 2, 1850, and chapter 907, Laws of 1869.

Nor does it apply to Oswego, Madison, Erie, Orleans, Niagara or Genesee counties.

### **§ 468. Board of Town Auditors to Prescribe Bond of Railroad Commissioners and Approve Sureties.**

The railroad commissioners, before entering upon their duties, and before receiving any funds, are required to make and deliver a bond in such penalty and with such sureties as said board of town auditors prescribe.

Laws of 1873, chap. 720, § 1; 1 R. S. 879.

### **§ 469. Duty on Vote of Town to Levy a Tax for the Purpose of Buying and Canceling Town Bonds, etc.**

Any town or incorporated village in this State having issued its bonds, or that may hereafter issue its bonds, under the provisions of law, which are a valid debt of said town or village, to mature or become due in a specified period of time, may, by vote, at any annual town meeting or charter election, raise, by tax levied upon the taxable property of said town or village, such sum as may be specified by said vote, for the purpose of buying and canceling said bonds, or the purpose of providing a sinking fund for the ultimate payment of said bonds.

Laws of 1874, chap. 410, § 1; 1 R. S. 868.

The town board, consisting of the supervisor, town clerk and justices of the peace in towns, or the village trustees in villages, shall meet at least twenty days before the annual town meeting, or the annual village election, and shall determine, by a majority of said board, what amount shall be annually raised for the above purpose, and the form of the ballot, and the manner of voting; and shall give notice of such voting, by posting at least five notices in public places in said town or village, setting forth the time of such voting, the amount to be raised, and the purpose for which the same is raised; and the result of such vote shall be operative until the same shall be changed by a vote of said electors, taken in a similar manner at a subsequent election.

Id., § 2.

The money so raised shall be used to buy and cancel the said bonds, provided the same can be purchased at their par value; or, in case said bonds cannot be so purchased, said money shall be paid over to the county treasurer of the county,

who shall loan the same at seven per cent per annum interest secured by mortgage on unincumbered real estate, for a period of time equal to the time said bonds have to run, or invest the same in bonds of the State of New York or of the United States, and at the maturity of said town or village bonds, said money shall be applied to the payment of said bonds. And the supervisor of such town, or president of the trustees of said village, shall be charged with the duty of receiving said money from the county treasurer, giving security for the same in double the amount received; and of purchasing or paying said bonds, and canceling the same in the presence of said town board or village trustees, as the case may be.

Id., § 3; 1 R. S. 868.

### **§ 470. Old Bonds may be Paid up or Retired by Issuing New Bonds.**

In 1886, by chapter 316, an act was passed by which any valid indebtedness of a town, county, village or city, might be paid up or retired by the issue of new bonds. The act may be found in full, *ante*, p. 38.

### **§ 471. Bonds Need not be Audited.**

Such obligations do not require to be allowed and audited by the board of auditors. It is the duty of the town to provide means for the payment of its bonds, lawfully issued. In case of failure to perform this duty, the holder of the bonds may maintain an action against the town thereon, and this, although by the act under which they were issued, it is made the duty of the board of supervisors to impose and levy a tax to pay the bonds.

Marsh v. Town of Little Valley, 64 N. Y. 112.

### **§ 472. Gospel and School Lot Funds.**

The board of auditors in each town shall annually report the state of the accounts of the trustees of the gospel and school lots in that town, to the inhabitants thereof, at their annual town meeting.

2 R. S. 1203, § 4.

The supervisor is "trustee" of said funds.

### **§ 473. "Town Notes," so Called.**

It is a very common practice, especially in relation to roads and bridges, for the town board and other officers to give promissory notes, or "*town notes*," as they call them, for various claims, signing them with their own names and their official designation.

They seem to be under the impression that they have a legal right to do so, and that such obligations bind the town therefor, and that the town is "back of them."

Public officers have such powers as, and no others than, are conferred by statutes. If they go beyond these, their acts bind themselves *individually*, but do not bind the town, or county. If it was intended to give such officers power to contract debts, issue notes or other obligations, in behalf of towns, or counties, some statute must exist therefor. It would be wise for such officers to examine the statutes and see if any such exist, allowing them to make, at their pleasure, "town notes." The following decisions may be of interest.

The board of supervisors cannot make bills of exchange.

Chemung Canal Bank v. Board of Supervisors of Chenango Co., 5 Denio, 517.

Highway commissioners have no power to contract a debt against a town by borrowing for the repair of roads and bridges.

Barker v. Loomis, 6 Hill, 463.

Orders drawn at the request of the overseer of the poor, by the board of town auditors upon the supervisors and accepted by them, create no liability against the town.

Osterhoudt v. Rigney, 98 N. Y. 222.

A note by highway commissioners, purporting to bind them in their official capacity, is not binding on their successors.

Van Alstyne v. Freday, 41 N. Y. 174; Barker v. Loomis, 6 Hill, 463.

The duty of the highway commissioners in repairing roads and bridges and keeping them in repair is co-ordinate only with the means furnished as prescribed by statute and does not authorize, either expressly or by implication, the incurrence of any debt or obligation upon the part of the town.

People, *ex rel.* Everett, v. Board of Supervisors, 93 N. Y. 397.

In order to make a judgment against the highway commissioners a town charge, it must have been recovered upon a liability incurred by them *acting within the scope of their authority*, and in such case, the claim therefor must be presented to be passed upon and audited by the town board of auditors.

*Id.*

Where a bridge is carried away by a freshet, *after* the town meeting, the highway commissioners, *provided they have the consent* of the board of town auditors, are authorized to contract to pay for rebuilding the bridge upon the completion thereof.

Boots v. Washburn, 79 N. Y. 207.

It seems that the consent of the board to rebuild must *first* be obtained before a legal contract could be made by the highway commissioners.

*Id.* 211.

Where public officers exceed their powers they are individually responsible to those with whom they contract, if any responsibility is thereby created.

People, *ex rel.* Everett, v. Supervisors, 93 N. Y. 397; Mygatt v. Washburn, 15 id. 316.

## Excess of Excise Moneys.

If the yearly receipts of excise moneys are in excess of the amount required to support the poor, the town board may expend the balance thereof on other ordinary town expenses.

Laws of 1872, chap. 143; 3 R. S. 1990.

But in counties where *all* the poor are a *county* charge, the excise moneys go to the county treasurer.

Laws of 1874, chap. 444, § 2; 3 R. S. 1990.

**§ 474. Certificate of Town Auditors.**—The said board shall make a certificate, to be signed by a majority of said board, specifying the name of the person in whose name the account is drawn, the nature of the demand, and the amount allowed; and shall cause a duplicate of said certificate to be made, one of which shall be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of the town, and the other shall be delivered to the supervisor of said town, to be by him laid before the board of supervisors of his county at their annual meeting.

Laws of 1840, chap. 305; 1 R. S. 835.

## FORM OF CERTIFICATE.

COUNTY OF \_\_\_\_\_ }  
 TOWN OF \_\_\_\_\_ } ss.:

We, the undersigned, the board of town auditors of said town, do hereby certify that at the time and place prescribed by law for holding the annual meeting of said board, said board was duly convened and organized; that the following is a true and correct statement of all accounts audited by said board at said meeting.

NAMES OF THE PERSONS FOR WHOM ACCOUNT IS DRAWN.	Nature of demand.	Amount allowed.
A. B. ....	Services as inspector of election. ....	\$4 00
C. D. ....	Services as commissioner of highway. ....	12 00
E. F. ....	Materials for bridge. ....	100 00
Total .....		\$116 00

Dated *October* , 188

(Signatures),  
 BOARD OF TOWN AUDITORS.

File one copy with the town clerk.  
 Deliver one to the supervisor.

**§ 475A. Supervisors to Raise Amount Audited.**—The said board of supervisors are hereby authorized and directed to cause to be levied and raised upon said town the amount specified in said certificate in the same manner as they are now directed to levy and raise other town charges.

Id.

The certificate of the board of town auditors, regular on its face, is a sufficient authority for the board of supervisors to proceed and cause the amount certified, to be levied on the town, and the supervisors have no discretion but to direct the amount specified in the certificate to be levied and raised upon the town.

*People v. Supervisors of Queens Co.*, 1 Hill, 195.

The board of supervisors are required to cause the amounts specified in the certificate of the town board to be levied upon the town, and they *cannot reverse or review* the action of the town board.

*Osterhoudt v. Rigney*, 98 N. Y. 222-235.

**§ 476B. Abstract of Town Accounts.**—It shall be the duty of boards of town auditors to make annually brief abstracts of the names of all persons who have presented to said board accounts to be audited, the amounts claimed by each of said persons, and the amounts finally audited to them respectively, and shall deliver said abstracts to the clerk of the board of supervisors, and the said clerk shall cause the same to be printed, with the statements required to be printed by him, by the fourteenth section of this act.

Laws of 1847, chap. 455, § 24; 1 R. S. 851.

FORM OF SUCH ABSTRACT.

COUNTY OF \_\_\_\_\_, } ss.:  
TOWN OF \_\_\_\_\_

We, the undersigned, the board of town auditors of said town, do hereby certify:

That the following is an abstract of the names of all persons who have presented to said board, accounts to be audited, the amounts claimed by each of said persons, and the amounts finally audited to them respectively, to-wit:

NAMES.	Amount claimed.	Amount allowed.
A. B.....	\$40 00	\$35 00
C. D.....	500 00	500 00

Dated \_\_\_\_\_, 188 .

(Signed) E. F.,  
SUPERVISOR,  
G. H.,  
TOWN CLERK,  
J. K.,  
L. M.,  
N. O.,  
JUSTICES OF THE PEACE,  
BOARD OF TOWN AUDITORS.

Deliver the abstract to the clerk of the board of supervisors.

## 2. BOARD OF COUNTY AUDITORS.

### COUNTY CHARGES.

**§ 477. The Board of Supervisors.**—All accounts chargeable against a county are to be examined, settled and allowed by the board of supervisors, who direct the raising of such sums as may be necessary to defray the same. Accounts for county charges of every description shall be presented to the board of supervisors of the county, to be audited by them.

2 R. S. 926, § 4, subd. 2, 3; id. 979, § 4.

§ 478. **Town Charges.**—With the exception of the accounts of justices of the peace and constables for services in criminal cases, *chargeable to a town*, which must be audited by the proper town board, the board of supervisors seem to have concurrent jurisdiction with the board of town auditors to audit town charges.

**Id. 926, § 4, subd. 3.**

But if either board has acted on a claim *upon the merits*, the other has no right to review or reverse such decision.

People, *ex rel.* Onderdonk, v. Supervisors, 1 Hill, 195; Osterhoudt v. Rigney, 98 N. Y. 222.

**§ 479. Principles and Practice.**—The principles and practice are the same for the county as the town board.

See *ante*.

**§ 480. When Accounts to be Presented.**

See *ante*.

**§ 481. Items to be Stated and Verified.**

See *ante*.

**§ 482. Accounts to be Numbered.**—All accounts presented in any year to the board of supervisors of any county, shall be numbered, from number one upwards, in the order in which they are presented, and a memorandum of the time of presenting the same, of the names of the persons in whose favor they shall be made out, and by whom they shall be presented, shall be entered in the minutes of the board to which they shall be presented; and no such account after being so presented shall be withdrawn from the custody of the board or its clerk for any purpose whatever, except to be used as evidence upon a judicial trial or proceeding; and in such case it shall, after being so used, be forthwith returned to such custody.

Laws of 1845, chap. 180, § 28; 1 R. S. 846, § 28.

**§ 483. What are County Charges.**

The following shall be deemed county charges (2 R. S. 978):

1. The compensation of the members of the board of supervisors, of their clerk, and of the county treasurer;
2. The fees of the district attorney, and all expenses necessarily incurred by him in criminal cases arising within the county;
3. The accounts of the criers of the several courts within the county, for their attendance in criminal cases;
4. The compensation of sheriffs for the commitment and discharge of prisoners on criminal process within their respective counties;

See 67 N. Y. 330.

5. The compensation allowed by law to constables for attending courts of record, and reasonable compensation to constables and other officers, for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for the service of subpoenas issued by any district attorney; and for

other services in relation to criminal proceedings, for which no specific compensation is prescribed by law ;

But not for issuing or serving any subpoena in any criminal case or proceeding on behalf of a defendant.

3 R. S. 2548.

6. The expenses necessarily incurred in the support of persons charged with, or convicted of crimes, and committed therefor to the several jails of the county ;

See 67 N. Y. 330.

7. The sums required by law to be paid to prosecutors and witnesses in criminal cases ;

8. The accounts of the coroners of the county, for such services as are not chargeable to the persons employing them ;

9. The moneys necessarily expended by any county officer in executing the duties of his office, in cases in which no specific compensation for such services is provided by law ;

See below "Moneys Necessarily Expended."

10. The accounts of the county clerks, for services and expenses incurred under the sixth chapter of this act ;

11. All charges and accounts for services rendered by any justice of the peace, under the laws for the relief and settlement of the poor of such county, and for their services in the examination of FELONS, not otherwise provided for by law ;

See note "A."

12. The sums necessarily expended in each county in the support of county poor-houses, and of indigent persons whose support is chargeable to the county ;

13. The sums required to pay the bounties allowed by law for the destruction of wolves and other noxious animals, and chargeable to the county ;

14. The sums necessarily expended in repairing the court-houses and jails of the respective counties ;

15. The contingent expenses necessarily incurred for the use and benefit of a county ; and,

16. Every other sum directed by law to be raised for any county purpose, under the direction of a board of supervisors.

2 R. S. 978, § 3.

Accounts of sheriffs for paying the fees of clerks of counties for drawing grand juries, for attending and drawing grand juries, and for summoning constables to attend courts, shall hereafter be presented to and audited by the boards of supervisors of the counties respectively in which such service shall be rendered, and such accounts shall not hereafter be chargeable to this State.

Laws of 1831, chap. 380, § 22.

**§ 484. Printing Calendar.**—The supreme court, a superior city court or a county court may, from time to time, by order, require the clerk to cause to be printed for the use of the members and officers thereof the necessary copies of the calendar of causes prepared for a term of the court, or in the supreme court, for the circuit court. But this section does not apply to the city and county of New York.

Code of Civil Procedure, § 19.

The expense of printing the copies of the calendar for a term shall be a charge upon the county in which the term is held; and must be audited, allowed and paid, by the board of supervisors thereof, in like manner as other contingent county charges.

Id., § 20.

**§ 485. Printing Session Laws.**—The expenses of printing the session laws in two newspapers are county charges, but are not to exceed fifty cents for each folio, the amount to be determined by the board of supervisors.

Laws of 1845, chap. 280; 1 R. S. 435.

**§ 486. Resolutions — Publishing of** — are a county charge.

Laws of 1875, chap. 482, § 2.

**§ 487. Terms of Court — Advertising**—pursuant to an order of a court, is *not* a county charge.

People, *ex rel.* Cole, v. Supervisors, 39 Hun, 299.

**§ 488. Audits — Publishing of, are a county charge.**—These *must* be published.

Laws of 1839, chap. 369; 2 R. S. 929.

Equalization proceedings must be published and are a county charge.

Id.

**§ 489. Election Notices and Official Canvass.**—Publishing the election notices and official canvass in not exceed-



ing two newspapers are a county charge, the compensation to be fixed by the board.

Laws of 1875, chap. 482, § 7.

The printing and posting of election notices by the town officers are *town charges*.

See § 458.

**§ 490. Census.**—The county and town clerks required to perform duties in relation to the census shall be allowed a just and reasonable compensation for their expenses and services, which shall be audited by the supervisors of the county where such services are performed, and shall be assessed, collected and paid as a part of the contingent expenses of the county in which they reside.

Laws of 1865, chap. 34; 1 R. S. 267.

**§ 491. Salaried County Officers.**—The salary of county officers fixed by law or by the board of supervisors is a county charge.

Laws of 1872, chap. 767; 2 R. S. 972, *et seq.*

As to salary of district attorney;

See Laws of 1852, chap. 304; 2 R. S. 971, *post*, District Attorney.

of assistant district attorney.

Laws of 1872, chap. 587; 2 R. S. 971.

**§ 492. Judgments.**—Judgments against the county or against county officers, in actions prosecuted by or against them in their name of office, are county charges.

2 R. S. 978, § 6.

See *post*, chap. , "Actions, etc., v. Towns, Counties."

**§ 493. Proceedings for Removal of County Officers.**—In all proceedings before the governor for the removal of any county officer, upon charges preferred against him, all the costs and expenses thereof, including taking and printing the testimony, are county charges.

Laws of 1874, chap. 323; 3 R. S. 2865.

This includes a fair charge for counsel fee.

People, *ex rel.* Benner, v. Supervisors, 39 Hun, 442.

These are to be *audited* as any other claim is audited.

People, *ex rel.* Benedict, v. Supervisors, 24 Hun, 413.

In *bribery* cases, the costs and expenses seem to be State charges.

Id.; arts. 15 and 16, Const.

**§ 494. Default of Tax Collectors.**—All losses which may be sustained by the default of the collector of any town or ward, shall be chargeable on such town or ward, and added by the board of supervisors to the next year's taxes of such town.

2 R. S. 1049, § 5.

**§ 495. Default of County Treasurer.**—All losses which may be sustained by the default of the county treasurer, in the discharge of the duties relating to collection of taxes, are county charges.

Id.

A county is not liable for money deposited with its treasurer, by order of the court, and misappropriated by him, if the evidence does not show that the money, or what portion of it, was used for the benefit of the county.

Gray v. Supervisors, 93 N. Y. 603. See S. C., 26 Hun, 265.

**§ 496. Support of the Poor.**—In Warren, Washington, Saratoga and Genesee counties, the support of the poor, and all costs and charges for attending the examination, conveyance, support and necessary expenses of paupers, are county charges.

3 R. S. 1857, § 23.

In counties acting under the Livingston county law, the expenses, after removal, and the expense of the removal of, indigent persons to the county house are county charges.

Id. 1871; Laws of 1845, chap. 334.

In those counties where all the poor are a town charge, the expenses are town charges.

The poor removed from the county poor-house by reason of any pestilential, infectious or contagious disease existing therein are to be maintained at the expense of the county while so removed.

Laws of 1885, chap. 270, § 6.

See *post*, "Poor, Support of."

**§ 497. Game and Fish.**—By Laws of 1880, chapter 591, as amended by Laws of 1883, chapter 317, a certain number of "game and fish protectors" were to be appointed. It was the duty of each and every "protector," and of every game constable, to seize, remove and forthwith destroy any net, pound or other means or device for taking or capturing fish, in or upon any of the waters of this State, or upon the shores of, or islands in, any waters of this State in violation of said law. The expense of such seizure, removal and destruction was made a county charge against the county

in which the same was seized, and to be paid on the certificate, "which shall be final," of such protector, which certificate "shall state the time and place of such seizure and destruction, the names of the persons employed therein, the time spent thereabout and the money advanced, if any, and to whom, and shall be verified by the oath of such protector or person as aforesaid making such seizure and destruction."

Laws of 1883, chap. 817, § 2.

By Laws of 1879, chapter 534, it was the duty of game constables, after reliable information, to prosecute all violations of said act.

"Whenever any game constable shall fail to recover the penalty in any such prosecution, the costs of suit incurred by him shall be charged to and against the county, and it shall be the duty of the board of supervisors of the county to *audit* and *allow* the same, as other county charges are audited and allowed."

Laws of 1879, chap. 534, § 38.

**§ 498. Insuring Buildings.**—The public officers having by law the care and custody of town, city, village or county buildings are authorized to insure the same at the expense and for the benefit of the town, village, city or county owning them.

Laws of 1847, chap. 294; 1 R. S. 859.

**§ 499. Court Criers.**—The county judge of each county except Kings, from time to time, may appoint and at pleasure remove, a crier for the courts of record held in his county, who is entitled to a compensation fixed and to be paid as prescribed by law.

Code of Civil Procedure, § 91, as amended in 1883.

In some counties the office is abolished; in others it is a salaried office; in others the crier receives \$3 per day. No fixed rule for the compensation can be given.

**§ 500. Damages by Mobs.**—Damages occasioned by any mob or riot are a county charge, but are to be recovered by action and not by audit.

Laws of 1855, chap. 428; 1 R. S. 860.

**§ 501. Election Expenses.**—The accounts of county clerks for services performed and expenses incurred under the election law (chapter 6, title 1, part 1) are to be audited, levied and paid in like manner as other contingent county charges.

1 R. S. 401.

**Convicts and Criminals, Removal of, by Sheriff,**

3 R. S. 2538, § 18.

and fees for removing juvenile delinquents to house of refuge, and of lunatics to the insane asylum, are fixed by the board.

Laws of 1859, chap. 254; 3 R. S. 2584.

**§ 502. Stenographers.**—Stenographers' fees for copies of testimony furnished in criminal cases to district attorneys and attorney-general, and their expenses and mileage, are county charges.

Code of Civil Procedure, §§ 86, 260.

The salaries of stenographers in the supreme court are county charges and generally paid by the county treasurer from the court fund, but in the first, second, third, fourth and sixth judicial districts special laws therefor have been passed.

After January 1, 1886, in the third and sixth judicial districts, said salaries are to be paid by the comptroller who, on or before November 1st in each year, transmits a statement thereof to the boards of supervisors to be levied.

Id., § 259.

In the fourth judicial district the stenographers reporting *special terms* therein receive a salary of not exceeding \$750 therefor, also necessary expenses for traveling and stationery, payable by the comptroller, who on November 1 of each year transmits a statement thereof to the boards of supervisors therein, to be levied and collected as a county charge.

Laws of 1886, chap. 401.

By Laws of 1886, chapter 131, the county judge of any county, upon the recommendation of the district attorney, may appoint a stenographer to take the testimony given before grand juries in said county; excepting in New York and Erie counties where the district attorney appoints; and providing further, that in all counties not having a population of 75,000, as shown by the State or Federal census next preceding such appointment, the county judge shall only appoint such stenographer upon a favorable vote of the board of supervisors.

Laws of 1886, chap. 131.

**§ 503. Stenographer for County Court and Court of Sessions.**—By section 358 of the Code of Civil Procedure, as amended by Laws of 1883, chapter 403, the board of supervisors of any county except Kings, Livingston, Monroe, Cortland, Oswego, Westchester and Onondaga, may, in their discretion, provide for the employment of a stenographer for the county court and court of sessions thereof, and when said board of supervisors shall so provide, the stenographer shall be appointed by the presiding judge of said courts, and said board of supervisors must fix his

compensation and provide for the payment thereof in the same manner as other county expenses are paid.

§ 504. **Costs.**—In an action or special proceeding, brought in the name of the people, to recover money or property, or to establish a right or claim for the benefit of a county, if costs be awarded defendant they are a county charge.

Laws of 1832, chap. 246; 3 R. S. 2463; Code of Civ. Pro., § 3243.

*Costs and expenses of trying an indictment for crime or misdemeanor, where the trial has been removed to another county, in consequence of any inability to obtain an unprejudiced or impartial jury, are a county charge upon the county from which such removal was had.*

Laws of 1853, chap. 195; 3 R. S. 2584.

But where a convict in either of the State prisons or New York State Reformatory shall be indicted and tried for any offense committed by him, during the time of his imprisonment therein, the expenses of such trial, and in case of conviction of murder in the first degree, the expenses of executing the judgment or sentence of the court are a State charge.

Laws of 1882, chap. 389.

§ 505. **Contingent Charges.**—Whenever services have been rendered which are beneficial to a county, and no specific compensation has been provided by law, they may be deemed contingent charges, of the allowance of which the supervisors are the best judges unless the legislature itself provides for them.

*People v. Hawes*, 34 Barb. 69; 21 How. 178; *People v. Albany*, 15 id. 225; *Brady v. New York*, 2 Sandf. 460; *Bright v. Chenango*, 18 Johns. 242.

But, where it appears to have been the intention of the legislature that no compensation should be made, the board cannot allow any.

*Mallory v. Cortland*, 2 Cow. 531.

The board of supervisors cannot lawfully engage a county in, or bind it to the payment of the expenses of a litigation by an individual to establish his right to an office, and the audit and payment thereof are unlawful.

*Supervisors v. Ellis*, 59 N. Y. 620.

## § 506. **Torts.**

See *ante*, "Town Charges;" "Torts."

Services in criminal cases, for which no compensation is specially provided by law, may be audited at such sum as the board of supervisors shall allow.

3 R. S. 2578, § 4.

**§ 507. Court-Rooms and Other County Property.**—The necessary expense incurred in keeping in repair and in a condition for use the court-rooms which the county is required to provide, or the property of the county, is a county charge.

People v. Stout, 23 Barb. 349; 4 Abb. 22; 13 How. 814.

This includes for court-rooms, convenient furniture, attendants, lights, fuel, and stationery. If the supervisors neglect so to do, the court may order the sheriff to make the requisite provision; and the expense incurred by him in carrying the order into effect, when certified by the court, is a county charge.

Code of Civil Procedure, § 31.

The expense of providing the *surrogates' courts* with room, fuel, lights, and stationery is a county charge.

Id.

If the supervisors have provided a proper office and furniture for the *surrogates' office*, they cannot be compelled to pay for any other.

People, *ex rel.* Westbrook, v. Supervisors, 34 Hun, 599.

Jails are included.

2 R. S. 927.

**§ 508. Jail Furniture**, necessary for a jail, is a county charge.

Schenck v. Mayor, 67 N. Y. 44.

**§ 509. Counsel.**—Services rendered as counsel for the board of supervisors are a county charge.

**§ 510. Counsel**, to assist district attorney in an important criminal action, or in a capital case when approved by the county judge, in writing, are a county charge

Laws of 1882, chap. 196; Laws of 1874, chap. 323; 2 R. S. 972.

or *counsel* designated or appointed by the governor or attorney-general, at the request of the district attorney to assist him on such trials, the cost and expenses therefor, certified by the judge presiding at such trial, are a county charge upon the county in which the indictment was found.

Id.

**§ 511. Counsel** assigned by the court to defend a prisoner on the trial of an indictment, his services are not a county charge.

People, *ex rel.* Brown, v. Supervisors of Onondaga Co., 3 How. (N. S.) 1; People, *ex rel.* Ransom, v. Supervisors, 78 N. Y. 622, and cases cited.

**§ 512. Counsel** employed by the superintendent of the poor in bastardy proceedings are a county charge.

Neary v. Robinson, 98 N. Y. 81.

**§ 513. Excise Commissioners.**—The compensation of excise commissioners at \$3 per day, while in session, is a county charge in counties where the support of the poor is a county charge;

Laws of 1874, chap. 444, § 1, as amended by Laws of 1886, chap. 459; 3 R. S. 1990.

in other counties it is a town charge.

Id.

**§ 514. Coroners.**— All items of coroner's compensation are county charge, to be audited and allowed by the supervisors.

Laws of 1873, chap. 833; 3 R. S. 2587.

Before auditing and allowing the account of a coroner the board of supervisors *must* require from him a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased or to the county treasurer.

Code of Criminal Procedure, § 788.

**§ 515. Physicians.**—Services of a physician, rendered by order of the district attorney in making a chemical examination or analysis in aid of an inquiry into a case of alleged poisoning, are a county charge.

People, *ex rel.* Sherman, v. Supervisors, 30 How. 173.

If a coroner employs two competent *physicians* to make a post-mortem examination and dissections, and to testify to the same, the compensation therefor is a county charge.

Laws of 1873, chap. 833; 3 R. S. 2586.

**§ 516. Coroner's Jurors.**—Fees of, are county charge.

Laws of 1873, chap. 833; 3 R. S. 2587.

Not to exceed \$1 per day.

Id.

But the coroner holding such inquest and summoning said jurors shall make report to the next succeeding board of supervisors after every such inquest of the names of such jurors, and the term of service of each, and upon what inquest rendered, on or before the *third* day of the annual session in each year.

Id., § 4.

**§ 517. Jurors.**—Expense of grand and petit jurors are a county charge not exceeding per day \$2 and mileage.

Code of Civ. Pro., § 3314.

If trial jury serve more than thirty days in a trial, court may order extra compensation.

Id., § 3315.

§ 518. **Jurors.**—Expense of food for, during trial, is a county charge.

Id., § 3315.

§ 519. **Lunatics.**—When county charge.

See *post*, “Lunatics.”

§ 520. **Idiots and Blind.**—When a county charge.

See *post*, “Idiots and Blind ”

§ 521. **Orphan Asylums.**

See *post*, “Orphans ”

§ 522. **Militia—Armories, etc.**—What expenses are county charge.

See *post*, “Military.”

§ 523. **Moneys Necessarily Expended.**—A county is not relieved from liability for money expended by a county officer in executing his official duties, by the fact that such duties are imposed by special laws, and that no pecuniary benefit inures to the respective counties from their execution.

People v. Supervisors of New York, 32 N. Y. 473.

Moneys are “necessarily expended” within the meaning of subdivision nine of section three of the statute above cited, when the expenditures are not only needful and proper as contradistinguished from such as are needless and improvident, but also reasonable, appropriate and customary in the execution of the particular official duty. Expenditures properly incurred by a district attorney in prosecutions for penalties are within the protection of the statute.

Id.

The fact that there are no funds in the county treasurer's hands to meet expenses necessarily incurred by a county officer is no reason why the board of supervisors should not audit such an account, though it might necessarily delay the payment. They may be compelled to do so by *mandamus*.

Hasbrouck v. Supervisors of New York, 22 How. 71.



District attorneys are county officers, and money necessarily expended by them in the discharge of their official duties, in the absence of provisions for specific compensation, are chargeable to the county.  
Id.

As the supervisors are authorized to commence suit, although they misjudge in regard to the merits of their cause of action in a particular case, the fair charges of the attorneys and counsel employed by them are a legal demand against the county.

Gillespie v. Broas, 23 Barb. 270.

**§ 524. Referee's Fees.**—The referees appointed to assess damages for laying out a highway at \$2 per day are a county charge *when the determination of the highway commissioners is reversed.*

1 R. S. 849, § 9.

**§ 525. Superintendent of the Poor, and Subordinate Officers.**—Such boards of supervisors shall have the power, and it shall be their duty, to audit the accounts of the superintendents of the poor of the county, and to examine the accounts of subordinate county officers.

Laws of 1869, chap. 855.

**SECTION 1.** The boards of supervisors of the several counties of this State are hereby authorized to make such regulations and requirements concerning the keeping of poor accounts, and disbursements by overseers of the poor, and their report to town auditors, and also, concerning the keeping of poor accounts and disbursements and the manner of auditing bills presented to them and their report to the board of supervisors by county superintendents of the poor, as the efficiency of the service and the protection of the interests of the public may require, all such rules, regulations and amendments thereto, to be adopted by such boards of supervisors at a regular session of the board.

Laws of 1886, chap. 355.

This act does not apply to Richmond county.

See Neary v. Robinson, 98 N. Y. 81.

## **§ 526. Account and Report of Superintendent of the Poor.**

TO THE HONORABLE THE BOARD OF SUPERVISORS OF THE COUNTY OF ONEIDA:

The undersigned herewith submits his annual report of the expenditures and cost of maintaining the indigent poor under his charge, custody and control for the year ending October 31, 1885.

### DEBITS.

#### FOR SUBSISTENCE.

Groceries .....	\$6,576 39	
Flour.....	4,319 16	
Meats.....	9,695 30	
Butter and cheese.....	743 44	
Vegetables.....	757 50	
Meal.....	809 50	
		<hr/>
		\$22,901 29

## CLOTHING.

Dry goods .....	\$3,244 69	
Men's clothing.....	1,228 75	
Hats and caps.....	73 10	
Boots and shoes.....	592 50	
	<hr/>	\$5,139 04

## HOUSE FURNISHING.

Crockery.....	\$582 24	
Miscellaneous house utensils .....	322 39	
	<hr/>	904 63

## CONTINGENCIES.

Hardware.....	\$483 24	
Medicines.....	863 85	
Coal.....	4,997 89	
Miscellaneous .....	55 90	
Beef packing barrels.....	236 50	
Soap and soap stock.....	274 32	
Transporting State pauper to New York.....	18 00	
	<hr/>	6,929 70

## FARM.

Utensils.....	\$277 88	
Blacksmithing .....	259 57	
Wagons, sleighs and repairing .....	282 45	
Sundries .....	197 52	
Phosphate and manure .....	331 08	
	<hr/>	1,348 50

## LIVE STOCK.

Cattle .....	\$1,547 60	
Oxen and horses .....	607 50	
Hay.....	263 72	
Straw .....	877 58	
Feed.....	2,727 25	
Sheep and lambs.....	433 00	
Poultry .....	162 89	
	<hr/>	6,621 54
Transportation of paupers.....		459 22

## SALARIES.

Physician .....	\$800 00	
Attendants .....	7,449 03	
	<hr/>	8,249 03

## CASH.

Transferring patients to Utica, Syracuse, Newark and Amityville.....	\$103 85	
Postage .....	40 20	
Telephone .....	55 50	
Sundries .....	22 50	
Freight.....	99 86	
	<hr/>	321 91

Total .....	\$52,874 86
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## CREDITS.

Amount of appropriation by last board.....	\$15,000 00	
Amount received and due from pay patients.....	4,097 44	
Amount received and due from State board of charities...	4,535 70	
		<u>\$23,633 14</u>

## SALES FROM FARM.

Hides ... ..	\$764 45	
Tallow .....	140 96	
Sundries . . .	230 70	
Cash on hand .....	220 00	
		<u>1,356 11</u>
Balance deficiency to be provided for.....		27,885 61
		<u>\$52,874 86</u>
Total .....		<u>\$52,874 86</u>
Amount received from State board of charities and paid over to the county treasurer.....		<u>\$4,535 70</u>
Whole amount of deficiency to be provided for .....		<u><u>\$32,421 31</u></u>

## CASH.

Sundry receipts... ..		\$4,301 85
Transferring patients to Utica, Syracuse, Newark and Amityville .....	\$103 86	
Postage .....	40 20	
Telephone .....	55 50	
Freight and express.....	99 86	
Sundries .....	22 50	
Paid county treasurer.....	3,759 94	
Cash on hand.....	220 00	
		<u>4,301 85</u>

## STATISTICS.

Number on hand November last.....	483
Received during the current year.....	476
Number born .....	10

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 969

Number discharged during the current year.....	378
Number died .....	69
Number bound out.....	10
Number absconded.....	10
Number remaining November 1, 1885.....	502

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 969

Average cost per week, \$1.46 9-16. Number weeks' board, 29,229.

Number in county house.....	151 males, 91 females.....	242
Number in asylum.....	100 males, 160 females.....	260

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 Total..... 502
 

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Names of State paupers on hand October 31, 1885: James Blanchard, Mary E. Kelsey, *and so on*. Total, 46.

Names of incurable insane whose maintenance is partially or wholly contributed by their friends: Martha Braman, *and so on*. Total, 31.

Articles of clothing and bedding manufactured at the Oneida county almshouse during the current year ending October 31, 1885: 1,218 chemises, 180 waists, *and so on*.

PRODUCTS OF FARM DURING THE CURRENT YEAR.

6,478 lbs. butter, 22c ... ..	\$1,425 16	12,500 heads cabbage, 3c....	\$375 00
180 tons hay, \$12.....	2,160 00	175 quarts strawberries, 10c.	17 50
5 tons straw, \$7.....	35 00	280 quarts currants, 10c.....	28 00
40 tons corn fodder.....	240 00	Summer squash.....	5 00
1,225 bush. potatoes, 40c....	490 00	3 load pumpkins, \$1.....	3 00
150 bush. onions, 60c.....	90 00	650 summer Hubbard squash,	
50 bush. cucumbers, \$1.20.	75 00	3c.....	19 50
100 bush. tomatoes, 35c.....	35 00	Pie plant.....	15 00
50 bush. apples, 60c.....	30 00	9,265 lbs. beef, 2c.....	185 30
780 bush. carrots, 35c.....	273 00	10,773 lbs. pork, 6c.....	646 38
1,225 bush. beets, 50c.....	612 50	1,350 lbs. veal, 6c.....	81 00
750 bush. sweet turnips, 40c.	300 00	Turkeys, chickens and eggs,	225 00
300 bush. flat turnips, 25c...	75 00	Pigs.....	80 00
150 bush. peas, 50c.....	75 00	28,500 quarts milk, 2c.....	570 00
250 bush. oats, 40c.....	100 00	85,000 quarts skim milk, ¼c..	425 00
20 bush. beans, \$1.50.....	30 00		
240 bush. corn, 80c.....	192 00		
125 bush. sweet corn, 65c...	81 25		
			<u>\$3,984 59</u>

STOCK ON HAND — 8 horses, 2 bulls, 9 heifers, 3 calves, 62 cows, 1 yoke oxen, 75 pigs, 77 hogs.

COMPENSATED SERVICES — Physician, \$800; book-keeper, \$480; engineer, \$480; baker, \$300; attendants, \$6,189.03; total, \$8,249.03.

All of which is respectfully submitted,

THEO. S. COMSTOCK,

SUPERINTENDENT OF THE POOR.

The vouchers accompanying this report, properly verified, numbered, folded and indorsed, should be presented with the books.

**§ 527. Supervisors' Accounts.**—The accounts of the members of the board of supervisors shall be made out in items, and verified as before provided.

Laws of 1845, chap. 180, § 22; 1 R. S. 845.

But no supervisor can act as a member of any standing committee of the board having at the time under consideration any bill in which such supervisor shall be pecuniarily interested.

Laws of 1869, chap. 855, § 6.

COUNTY OF ONEIDA:

To \_\_\_\_\_,

DR.

SUPERVISOR OF THE TOWN OF.....

188 .

20. To annual salary as supervisor..... \$  
 To making one copy assessment roll, ....written lines....  
 To mileage to and from session ONCE, ....miles at 8c.....

\$

ONEIDA COUNTY, ss.:

being duly sworn, says that the items of the foregoing account are correct; and that the disbursements and services charged therein have been in fact made or rendered, or are necessary to be made and rendered at the current session; and that no part thereof has been paid or satisfied.

Sworn before me, December , 188 .

In those counties where the compensation of members of the board is *not* a fixed salary therefor, the bill should be made *per diem* and the amount is at the rate of "\$3 for each full day of twenty-four hours."

**§ 528. Taxes.**—The *notices* of unredeemed lands sold and advertised by the comptroller are a county charge.

2 R. S. 1028, § 61.

Maps required by the comptroller preparatory to a sale of lands for taxes are a county charge.

2 R. S. 1025, § 43.

Copies of act relating to taxation transmitted to the county treasurer by the comptroller, shall be distributed by the treasurer as follows:

Five copies to each town clerk.

One copy to each assessor and collector.

The expense of distributing is a county charge.

2 R. S. 1050, § 14.

## **§ 529. Form of General Account Against County.**

THE COUNTY OF ONEIDA:

ROME, September 30, 1885.

TO JONES & HOWER.

DR.

1885.

Feb. 21, 1207 lbs. broken rice, at 6 cents.....	\$72 42
May 12, 2400 lbs. imported beans, 40 bushels, \$2.15....	86 00
June 10, 200 lbs. cod, at 6 cents .....	12 00
2 boxes whole cod, 900 lbs., at 6 cents.....	54 00

\$224 42

(Add verification.)

## **§ 530. Accounts of Justices of the Peace.**

§ 6. The bills rendered by justices of the peace for services in criminal proceedings shall, in all cases, contain the name and residence of the complainant, the offense charged, the action of the justice on such complaint, the constable or officer to whom any war-

rant on such complaint was delivered, and whether the person charged was or was not arrested, and whether an examination was waived or had and witnesses sworn thereon; and the account shall also show the final action of the justice in the premises. At any time within fifteen days after the board of town auditors of any town shall have filed with the town clerk thereof, the certificate of accounts audited, as required by law, any tax payer of said town may appeal from the action of said board of town auditors, in auditing the account of any justice of the peace, to the board of supervisors in the county. Such appeal shall be made by serving notice thereof in writing on the town clerk of the town, and on the clerk of the board of supervisors, within the time above limited. The said supervisors shall thereupon audit the accounts of such justice of the peace, and their decision in the auditing and allowing of said accounts shall be final.

Laws of 1869, chap. 855, § 6, as amended by Laws of 1871, chap. 274.

The accounts of justices and constables in these cases are audited as follows :

**§ 531. 1. Town Charges are to be Audited by the Town Board.**—Any *tax payer* may appeal to the board of supervisors, who then, and not till then, have power to audit them.

**§ 532. 2. County Charges Therein are Audited by the County Board.**—The rules for distinguishing what are town and county charges are as follows :

*First.* In all criminal cases, *except felonies*, the town wherein the offense was committed is chargeable with all the expenses, when the prisoner is tried before the justice.

*Second.* But if the prisoner shall be bound over to the court of oyer and terminer, or court of sessions, or committed to jail, to await a trial in either of said courts, the costs of the proceedings had before the single magistrate shall be chargeable upon the towns wherein the offense is committed, and audited by its board of town auditors, and after the person charged shall have been so bound over or committed, the costs are chargeable to the county, and these latter only are audited by the board of supervisors.

*Third.* If the offense charged is a felony, all the expenses are county charges and audited by the board of supervisors.

Laws of 1845, chap. 180, as amended by Laws of 1847, chap. 455; 1 R. S. 846.

A felony is a crime which is or may be punishable by either death or imprisonment in State prison.

Penal Code, § 5.

*Before* auditing or allowing a justice's account he should be *required to present the report* mentioned at section "533 A," *post*.

### § 533A.

TO THE HONORABLE THE BOARD OF SUPERVISORS OF

COUNTY:

NOVEMBER 1, 188 .

I, \_\_\_\_\_, a justice of the peace of \_\_\_\_\_, county of \_\_\_\_\_, do hereby make my report to said board pursuant to chapter 404 of the Laws of 1863, as amended by chapter 341, Laws of 1864.

I have not received any money on account of any fine or penalty or other matter in which said county or said town has any interest since the date of my last report, filed with said board on the \_\_\_\_\_ day of \_\_\_\_\_, 188 , (or since I assumed the duties of said office), except the following.

Time when received.	Name of person from whom received.	Amount.		On what account.

There is now due from me and remaining unpaid on account of moneys which I am authorized to receive and which said county or town is interested no sums of money except the following:

Name of person from whom due.	On what account.	Amount.	

Total ..... \$

\_\_\_\_\_,  
JUSTICE OF THE PEACE.

AFFIDAVIT TO BE ATTACHED TO SAID REPORT.

TOWN OF \_\_\_\_\_, COUNTY, } ss.:  
\_\_\_\_\_, being duly sworn, says he is the person named in and who makes the foregoing report; that he has therein correctly stated the time when, the name of the person or persons from whom received; and the amount and account on which the same was received; and that he has correctly stated all sums remaining due and unpaid on account of moneys which he has received and in which said town (or county) is interested.  
(Signed.)

Subscribed and sworn before me, } ss.:  
November . 188 .

§ 534.

FORM OF JUSTICE'S ACCOUNT.

THE COUNTY OF ONEIDA

To.....Justice of the peace, Dr.,  
who resides at.....town of.....

The People  
vs.  
....., Defendant.

Complainant's name was.....  
Complainant resides at.....town of.....  
Offense charged was.....  
On the information filed I issued a.....

(Giving the action of justice in the matter.)

Warrant was delivered to.....Constable  
The defendant was.....arrested  
An examination of defendant was.....had

Witnesses sworn on such examination were as follows :

.....  
.....  
.....  
.....  
.....  
.....  
.....

Defendant was.....

(Giving final action of justice in the matter.)

To administering.....oaths, at ten cents.....  
To drawing an information......25  
To taking deposition of.....witnesses on information.....  
To issuing warrant of arrest......25  
To indorsing warrant from county of......25  
To warrant of commitment......25  
To subpoena......25  
To.....copies of subpoena for service, at ten cents.....  
To filing.....  
To.....copy of.....folios, at five cents.....



To certificate.....	—
To drawing undertaking of bail.....	.25
To taking .....acknowledgment.....	—
To.....days' attendance in hearing or examination.....	—
To.....necessary adjournments.....	—
To venire.....	.25
To swearing.....witnesses, at ten cents.....	—
To swearing jury.....	.25
(And so on with each item.)	

Total.....\$—

STATE OF NEW YORK, }  
ONEIDA COUNTY, } ss.:

.....being duly sworn, says that he is the claimant above named; that the items of such account above set forth are correct, and that the services charged therein have been in fact made or rendered, or necessary to be made or rendered; that no part thereof has been presented to any preceding board of supervisors for audit, and no part thereof has been paid or satisfied; that he has duly made his report on fines, penalties and other moneys received by him in which said town (or county) is interested, to the board of supervisors of said county, at their annual session in 188 ; pursuant to chapter 404, Laws of 1863, and its amendments; and that he has paid over to said town (or county) all moneys which he is bound to pay over.

(Signed) .....

Sworn to before me, this.....day }  
of.....18.. }  
..... }

## § 535. Accounts of Constables.

See note to preceding section as to justices of the peace, and next section.

### FORM OF CONSTABLES' ACCOUNTS.

COUNTY OF ONEIDA :

To....., Constable, Dr.  
Residence .....

The People

vs.

A. B.

Warrant issued by .....  
Offense charged.....  
Offense committed in town of .....  
Defendant arrested at.....  
Distance actually and necessarily traveled to arrest said defendant going from .....to.....and returning...miles.  
To serving (insert name of precept served) on said defendant at.....  
To taking said defendant into custody on mittimus.....  
To.....miles traveled in going from.....to (Utica or Rome jail, as the case may be) in order to deliver said defendant.  
To taking charge of jury.  
To keeping prisoners.....days.  
To notifying complainant, complainant's name was .....and he resides at.....  
The services herein were rendered by the direction of.....  
The said defendant was (discharged or committed or bailed as the case may be) by said magistrate.

Travel fees are to be computed from the place where mandate or process is served or executed to the place where it is returnable, unless a different rate is specially prescribed by statute; where two or more mandates are served or executed in one special proceeding, or against two or more persons in one action or proceeding, the constable is entitled, in all, to only ten cents for each mile necessarily traveled.

Code of Civ. Pro., §§ 3322, 3323.

A constable, who charges any traveling fees, *must show by affidavit* that the travel was necessary to perform the service with respect to which it is charged; that no more miles are charged for than were actually and in good faith traveled for that purpose; that he had, at the time, no other official or private business upon the route so traveled, and that the traveling fees are charged upon one mandate only, which must be attached or described in the affidavit.

Id., § 3324.

### FORM OF ACCOUNT FOR SERVICE OF SUBPOENA.

The People

vs.

A. B.

Subpoena issued by.....  
 Offense charged was.....  
 Number of names in precept.....  
 Number of persons upon whom served.....

Place where each witness was served was as follows:

.....  
 .....  
 .....

Number of miles actually traveled to make such service, going and returning,  
 and not separate mileage for each witness.....  
 Notifying complainant.....  
 Precept returned to .....  
 Offense was committed in town of .....at.....

STATE OF NEW YORK, }  
 ONEIDA COUNTY, } ss.:

I (insert name of person making the affidavit), being duly sworn, do depose and say:

That the items of the foregoing account are correct, and that said account, or any part thereof, has not been presented by me, or by any one in my behalf, to any preceding board of supervisors for audit; that the disbursements and services charged therein have been in fact made or rendered, and that no part thereof has been paid or satisfied; that the travel charged in serving the process in each of the above-entitled cases was necessary on the process on which it was charged, and that no more miles are charged for than were actually and in good faith traveled on the execution of such process; that at the time I executed said process I had no other private official business on such traveled route, and that the charge for going and returning is made only upon one process, which process is attached or described in this account and affidavit.

(Signed) .....

Sworn to before me, this.....day of.....,  
 188..

C. D.,  
 JUSTICE OF THE PEACE, ONEIDA COUNTY, N. Y }

§ 536. **To Publish Audits.**—It shall be the duty of the boards of supervisors in each county in this State, annually to publish in one or more public newspapers in such county, the name of every individual who shall have had any account audited and allowed by said board, and the amount of said claim, as allowed, together with the amount claimed, and also their proceedings upon the equalization of the assessment-roll.

Laws of 1839, chap. 369; 2 R. S. 929.

## CHAPTER IX.

### THE BOARD OF SUPERVISORS.

- |   |                                     |
|---|-------------------------------------|
| SEC. 537. Of whom composed.   | SEC. 549. Code of rules.            |
| 538. Annual and special meetings.   | 550. Second code.                   |
| 539. Annual meeting, how time there-<br>for fixed.  | 551. Order of business.             |
| 540. Special meetings.  | 552. Standing committees.           |
| 541. Quorum.  | 553. Priority of business.          |
| 542. Organization.  | 554. Chairman to preserve order.    |
| 543. Who to act in the absence of the<br>chairman.  | 555. Vote of chairman.              |
| 544. Proceedings when chairman de-<br>clares a resolution lost or car-<br>ried illegally. | 556. Members entitled to vote.      |
| 545. Clerk.   | 557. Filling of blanks.             |
| 546. Reading clerk.   | 558. Entries of minutes.            |
| 547. Janitor.   | 559. Altering rules.                |
| 548. Rules of order.  | 560. Committees.                    |
|   | 561. When not to act on committees. |
|   | 562. General powers and duties.     |
|   | 563. To appoint clerk, etc.         |

§ 537. **Of Whom Composed.**—The board of supervisors are composed of the supervisors of all towns and wards in the county, except in New York; Kings county has one supervisor at large.

§ 538. **Annual and Special Meetings.**—It is the duty of the supervisor of each town to attend the annual and every adjourned and special meeting of the board.

§ 539. **Annual Meeting—How Time There-  
for Fixed—Vote Required.**—The board fix the time and place of holding their annual meeting, by a vote of a majority of all the members *elected* in the county.

Laws of 1849, chap. 194; 2 R. S. 931.

The annual meeting is generally on the Wednesday following the meeting of the board of county canvassers.

§ 540. **Special Meetings.**—Special meetings may be called by the clerk of the board, at any time, on the written request of a majority of the board.

Laws of 1838, chap. 314, § 5; 2 R. S. 928.

**Meetings Must be Public.**—The boards of supervisors shall sit with open doors, and all persons may attend their meetings.

2 R. S. 926.

§ 541. **Quorum.**—A majority of the supervisors of the county shall constitute a quorum for the transaction of business; and

all questions which shall arise at their meetings shall be determined by the votes of the supervisors present.

There are certain questions which require a majority of the members of the board *elected*, others two-thirds of those *elected*.

See Laws, *post*.

These provisions cannot be altered by a rule of the board.

People, *ex rel.* Burroughs, v. Brinkerhoff, 68 N. Y. 259.

**§ 542. Organization**—At the time and place appointed for holding the annual meeting the supervisors are called to order by the clerk of the preceding board, who calls the roll of the names of the supervisors elected.

If any seat is contested, the one having the proper credentials from the town clerk or other proper town officers is entitled to his seat until the question is referred to a committee for investigation. The board can adopt or reject the report of such committee, and determine who is entitled to a seat.

See note below.

If the question has been tested by a court such adjudication determines the matter.

If a quorum is not present an adjournment should be taken to such time as will enable the absent members to attend.

Either a temporary or permanent organization can be made.

A caucus generally decides who the officers shall be, and also who shall make the proper motions therefor at the meeting of the board. This saves time and trouble.

The clerk puts the motion pertaining to the chairman, which may be *viva voce* or by ballot, or on a call of the roll each supervisor rising and naming his choice for chairman.

After a chairman is elected he puts the other motions as they are made, and the former clerk's duties are ended.

The officers chosen in the permanent organization are :

1. A *chairman*, who shall preside at such meeting and in all other meetings held during the year.

2 R. S. 926.

**§ 543. If He is Absent.**—In case of his absence the members shall choose one of their number as a temporary chairman.

Id.

**§ 544.**

If a chairman declare a resolution lost, or carried, illegally, and refuse to correct his error and to announce the resolution lost or adopted, as it should have been, a *mandamus* lies to compel him so to do.

People, *ex rel.* Burroughs, v. Brinkerhoff, 68 N. Y. 259.

even if a re-convening of the board is necessary for the purpose.

Id.

**§ 545. 2. A Clerk.**—The board, as often as may be necessary, shall appoint some proper person to be their clerk, who shall hold his office during their pleasure.

2 R. S. 927, § 9.

The duties of the clerk are prescribed by law, and are given in full hereafter.

**§ 546. 3. A Reading Clerk.**—Some member is generally chosen for convenience, as reading clerk, whose duty it is to read before the board all resolutions offered, reports of committees and other communications presented.

**§ 547. 4. A Janitor** is also generally chosen, some person outside of the board, whose duty it is to attend to and keep the rooms in order, act as messenger or page at the meetings of the board, etc.

Other officers, at the pleasure of the board, may be appointed and their duties prescribed.

**§ 548. Rules of Order.**—A code of rules or regulations is generally adopted before proceeding further. If the former board had one that is satisfactory, it may be adopted, on motion, or a new set prepared by a committee.

The board determine this question at their own pleasure.

The board have power, by resolution, to be duly entered on their minutes of proceedings, and to be published therewith:

“To make rules for the conduct of their proceedings, to compel the attendance of absent members at meetings of their respective boards, and for the maintenance of order and decorum at such meetings, and to enforce pecuniary penalties, not exceeding \$50 for each offense, for the violation of such rules.”

See “Codes,” next section.

Laws of 1875, chap. 482, § 7.

“To determine, unless the same shall have been determined by a court having jurisdiction thereof, upon the returns of the proper

certifying officers, and upon such other testimony furnished to them as would be competent in a court of law, all cases of contested membership in their respective boards, and, when so determined in any case, the decision shall be conclusive as to the right of the parties to the contest."

A rule of the board contrary to an express statute has been held to be void.

*People, ex rel. Burroughs, v. Brinkerhall*, 68 N. Y. 256.

What effect the provision of section 6, chapter 482, Laws of 1875, would have in such cases does not seem to have been yet decided.

Among the rules adopted by the board of supervisors of Westchester county was one providing that a motion for reconsideration might be made by any member, but that no such motion should be in order unless made on the same day or on the next day following the decision proposed to be reconsidered, unless by unanimous consent. On January 2, 1874, a resolution was offered in the board, appointing one Kinch its librarian. The resolution was amended by inserting the name of the relator for that of Kinch, and, as so amended, it was adopted. On January 3, a motion to reconsider this resolution was carried; on January 4, the resolution was reconsidered and lost; on January 7, a resolution appointing Kinch librarian was adopted.

*Held*, that the board had power to reconsider and rescind the resolution by which the relator was appointed its librarian, and to thereafter appoint Kinch to that office.

*People, ex rel. Birch, v. Mills*, 32 Hun, 459.

## § 549. Code of Rules — First.

1. The board shall assemble at such times as they may determine at a previous session, or upon call of the chairman; and when so called, shall be at the hours of ten o'clock, A. M., and two o'clock and seven o'clock, P. M.

2. The chairman shall preserve order at the sessions and have power to call any member of the board temporarily to the chair, and shall appoint all committees of the board, unless otherwise specially ordered.

3. A member desiring to speak or present any subject-matter to the board shall rise and address the chair, and shall not further proceed until recognized by the chair, and awarded the floor for such purpose.

4. No debate shall be in order until the pending question shall be stated by the chair.

5. When two or more members arise to speak at the same time, the chair shall determine which is entitled to the floor.

6. Any member upon being called to order shall take his seat, and shall remain therein until the board determine the point raised, and if the call shall be sustained, he shall not further proceed except in order, and by permission of the board.

7. Any resolution which by its terms calls for the appropriation of money for any specific object or purpose shall be read, for the information of the board, at least one session prior to its being put upon its passage, upon the request or motion of any member thereof.

8. Every member who shall be present when any vote upon a question is taken shall vote upon the same unless excused by the board, or unless he has a direct interest in the result thereof.

9. No motion for the reconsideration of the vote upon any question shall be entertained unless moved by one who voted in the majority upon such question, nor unless such motion be made within three days (upon which sessions of the board shall be held) subsequent to such vote having been taken.

10. A motion for the reconsideration of any question having been made and decided in the negative, no proposition for further reconsideration shall be entertained.

11 The "previous question" shall be as follows: "Shall the main question be now put?" and until it is decided shall preclude all amendments or debate.

When, on taking the previous question, the board shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate.

The "main question" shall be on the passage of the matter under consideration, but when amendments are pending, the question shall first be taken upon such amendments in their order.

12. The ayes and nays shall be taken upon any question on the demand of two members, and every member within the railing shall vote when his name is called, unless excused by the board therefrom.

13. At each session, the business shall be:

1st. Reading the minutes of the last preceding session.

2d. The presentation of petitions and communications.

3d. Reports of committees.

4th. Motions and resolutions.

When a question shall be under consideration, no motion shall be received except as herein specified, which motions shall have precedence in the following order:

1. An adjournment, or recess of such session.

2. For the previous question.

3. To lay on the table.

4. To refer to standing committee.

5. To refer to select committee.

6. To amend.

(The first three motions are neither *amendable* nor *debatable*.)

14. All resolutions offered shall be in writing, and shall be entered at length upon the journal.

15. The question of concurrence with the report of any auditing committee shall be laid upon the table until the next succeeding meeting of the board, upon the request or upon motion of any member of such board.

16. These rules shall not be amended except upon notice of at least one session of the board previous thereto, and upon a day succeeding such notice; nor shall they be suspended except in special cases, and then only upon receiving the affirmative vote of two-thirds of all the members of the board.

## § 550. 1. Second Code.

Upon the appearance of a quorum, the chairman having taken the chair, and the members being called to order, the minutes of the preceding day must be read, to the end that any mistake therein may be corrected by the board.

## § 551. 2. Order of Business.

After the minutes are read and approved, the order of business shall be as follows:

1. The presentation of petitions.

2. Reports of standing committees.

3. Reports of select committees.

4. Introduction of resolutions, notices and motions.

5. Unfinished business.

6. Special orders of the day.

## § 552. 3. Standing Committees.

Standing committees shall consist of three; except the equalization committee, which shall consist of nine members, and shall be appointed on the following subjects, to-wit:

1. Sheriff and jailer.

2. County judge and surrogate.

3. County justices.



4. County clerk.
5. Lunatic and other asylums.
6. Loan officers and coroners.
7. Capital police.
8. City constables—First assessor district.
9. City constables—Second assessor district.
10. City constables—Third assessor district.
11. Constables of north assembly district.
12. Constables of south assembly district.
13. Miscellaneous accounts.
14. District attorney.
15. House of industry.
16. County treasurer.
17. Finance.
18. Equalization.
19. Unfinished business.
20. Law committee.
21. County buildings; other than those embraced in the fifth and fifteenth subdivisions of this rule.
22. Printing.
23. Refunding committee.
24. Military.

And it shall be the duty of each of the several committees to inquire into the matter indicated by its name, and report thereon to this board as soon as may be, and at least two days before the last day of the annual meeting, and also any information and any resolution which it may deem conducive to the public good.

### **§ 553. 4. Priority of Business.**

All questions relating to the priority of business, that is, the priority of one question or subject-matter over another, under the same order of business, shall be decided without debate.

### **§ 554. 5. Chairman to Preserve Order.**

The chairman to preserve order and decorum, and decide all questions of order, which decision shall be final, unless an appeal is taken to the board. On an appeal from the decision of the chairman, he shall have the right in his place to assign his reason for his decision. He shall also have the right to substitute any member to perform the duties of the chairman, but such substitution shall not extend beyond two days, unless by leave of the board.

### **§ 555. 6. Vote of Chairman.**

When the board is equally divided, including the chairman's vote the question shall be deemed to be lost.

## **7. Order.**

When the chairman is putting a question, no member shall walk across or out of the room.

## **8. Order of Speaking.**

A member rising to debate, to give a notice, to make a motion or report, or to present a petition or other paper, shall address the chairman, and shall not proceed further until recognized by him.

## **9. Members Entitled to Speak.**

No member shall speak more than twice, nor more than five minutes to the same general question, without leave of the board.

## **10. Order and Silence.**

While a member is speaking, no member shall entertain any private discourse, or pass between him and the chair.

## **11. Calls to Order.**

If any member, in speaking or otherwise, transgresses the rules of the board, the chairman or any member may call to order, in which case the member so called to order shall immediately sit down, unless permitted to explain.

## **§ 556. 12. Members Entitled to Vote.**

Every member who shall be present when any question is stated from the chair, shall vote thereon, unless excused by the board, or unless he be directly interested in the question, in which case he shall not be allowed to vote.

## **13. Manner of Presenting Petitions.**

Every member, previous to presenting a petition or memorial, shall indorse on the same the subject to which it relates, and add his name; the clerk hands his name to the chairman, who shall state the substance thereof, after which he shall put the question on the disposition of said petition or memorial.

## **14. Motions and Resolutions.**

Every motion or resolution shall be first stated by the chairman, or read by the clerk before debate, and immediately before the question is put; and every such motion, except of the class of motions embraced in rule 18, shall be reduced to writing, if the chairman or any member desire it.

## **15. Withdrawal of Motion.**

After a motion is stated by the chairman, it shall be deemed to be in the possession of the house, but may be withdrawn at any time before a decision is made or an amendment adopted.

## **16. Divisions of Questions.**

If the question in debate contains several distinct propositions, the same shall be divided by the chair at the request of any member, to the end that a vote may be taken on each proposition; but a motion to strike out and insert shall be deemed indivisible.

## **§ 557. 17. Filling Blanks.**

When a blank is to be filled, and different sums or times are proposed, the question shall first be put on the largest sum and longest time.

## **18. Motions, When Receivable.**

When a question is under debate, no motion shall be entertained, unless for an adjournment of the board, for the previous question, to postpone indefinitely, to postpone to a certain day, to lay it on the table, to commit it, to amend it; these several motions shall have precedence in the order in which they are here stated.

19. A motion to lay a question on the table shall be decided without amendment or debate, and a motion to postpone a question indefinitely, or to adjourn to a day certain, until it is decided, shall preclude all amendment of the main question.

## **20. Previous Question.**

The "previous question" shall be as follows: "Shall the main question now be put?" and, until it is decided, shall preclude all amendment and debate. When, on taking the previous question, the board shall decide that the question shall not now be put, the main question shall be considered as still remaining under debate. The main question shall be on the passage of the resolution or other matter under consideration.

## **21. Adjournment.**

A motion to adjourn the board shall always be in order, and decided without debate.

## **§ 558. 22. Entries on Minutes.**

In all cases where a resolution or motion shall be entered on the minutes, the clerk shall also enter the name of the moving member.

## **23. Committee of the Whole.**

In forming a committee of the whole board, the chairman shall leave the chair, and appoint a chairman to preside.

## **24. Rules for that Committee.**

The rules of the board shall be observed in the committee of the whole, so far as they may be applicable, except limiting the number of times of speaking, and except that the ayes and noes shall not be taken, and except, also, that a motion to rise and report progress shall always be in order, and shall be decided without debate.

## **25. Motions to Reconsider.**

No motion for reconsideration, except by unanimous consent, shall be in order, unless on the same day, or on one of the three days of session following that on which the decision proposed to be reconsidered took place, nor unless one of the majority shall move such reconsideration; and a motion for reconsideration, being put and lost, shall not be renewed; nor shall any vote be a second time reconsidered without unanimous consent.

## **§ 559. 26. Altering Rules.**

No standing rule or order of this board shall be rescinded, suspended or changed, nor any rule or order added thereto, unless it be by unanimous consent, or without one day's notice being given of the motion therefor; and such notice shall in all cases state specifically the object of the suspension.

## 27. Excuse from Voting.

Every member requesting to be excused from voting may make a brief and verbal statement of the reason for making such request, and the question shall be taken without further debate.

28. The chairman shall, with the concurrence of the board, appoint all committees except where the board shall otherwise order.

29. Committees, on making reports, shall return to the clerk all the papers relating thereto.

30. All reports of committees may be read by the members making them, when called in their order, and then be presented to the board; but the board may dispense with the reading thereof.

31. All reports of standing committees on the auditing of accounts and the report of the equalizing committee shall lie over one day at least before being acted upon.

32. All reports, resolutions and other matters laid on the table may be called therefrom under subdivision four of rule second, in the order of business.

The "first" set of rules have been found sufficient for all practical purposes.

**§ 560. Committees.**—The standing committees are appointed as the rules prescribe, either by the chairman or the board. One set of them are named in rule 3 of the second code above. The practice varies in different counties. Some counties have the following:

### STANDING COMMITTEES.

1. On form of assessment-rolls.
2. On footing of assessment-rolls.
3. On accounts in the department of the sheriff.
4. On accounts of justices and constables.
5. On miscellaneous accounts.
6. On accounts connected with coroners' inquest, etc.
7. On printing and stationery.
8. On accounts connected with the county buildings.
9. On accounts connected with the support of the poor.
10. On accounts of supervisors as such.
11. On erroneous assessments.
12. On erroneous taxes.
13. On military affairs.
14. On uncollected resident, school and highway taxes.
15. On roads and bridges.
16. On judiciary.
17. On legislation.
18. On State loans.
19. On settlement with county treasurer.
20. On interment of deceased soldiers and sailors.
21. On incorporated companies.
22. On State lunatic asylum.
23. On grand jury lists.
24. On orphan asylums.
25. On ratio and apportionment of taxes.
26. On rejected taxes.
27. On equalization.

**§ 561. When Not to Act on Committees.**—No supervisor shall act as a member of any standing committee of the board of supervisors having at the time under consideration any bill in which such supervisor shall be pecuniarily interested.

Laws of 1869, chap. 855, § 6.

**§ 562. General Powers and Duties.—Powers of a County, how Exercised.**—The powers of a county as a body politic can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

2 R. S. 924, § 4.

The proper mode by which a board of supervisors renders itself legally liable is by resolution entered in its minutes. Its clerk is to make entries of all resolutions or decisions on questions concerning the raising or payments of moneys.

2 R. S. 927, § 9; *Chemung Canal Bank v. The Supervisors of Chemung*, 5 Denio, 523; *People, ex rel. Masterson, v. Gallup*, 12 Abb. N. C. 64.

*Powers are Limited by Statute.*

The supervisors have only such powers as are conferred on them by statute. Unless some statute expressly or by necessary implication authorizes them to act, they have no right to act. When they confine themselves within the limits so prescribed their acts are valid, and no matter how much they err in judgment they are not responsible for such acts; but if they go beyond these limits, their actions have no more validity than those of other individuals, and they become personally liable therefor.

*People, ex rel. Merritt, v. Lawrence*, 6 Hill, 244; *Supervisors v. Ellis*, 59 N. Y. 620; *Chemung Canal Bank v. Supervisors*, 5 Denio, 517.

They cannot act upon what they think the law ought to be, nor can they acquire jurisdiction by asserting it.

"Jurisdiction" means the limit within which power may be exercised, and is given by the statutes.

Any act of a tribunal beyond its jurisdiction, whether it be outside of its *territorial* jurisdiction or beyond its *powers*, is null, void and of no effect whatever. Not only is the act void, but, if injury is the result of such action, the ones who thus act are personally liable therefor.

It is quite important, therefore, for supervisors to know what they *cannot* do, but it is equally important to know what they *must* do: because, "if any supervisor shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of supervisors, he shall, for every such offense, forfeit the sum of \$250."

2 R. S. 927, § 16. See cases, *supra*; *People, ex rel. Tracy, v. Green*, 47 How. 382.

A supervisor, by voting against allowing a claim which a statute imperatively requires the board to allow, subjects himself to this penalty; or if he neglect or refuse to perform the duties required by law, he is liable, whatever may have been the motive which influenced him.

*Morris v. People*, 3 Denio, 381.

Thus where a board neglected to raise money for the erection of public buildings, which money they were required by law to raise, the supervisors were held liable, although previous boards had been guilty of the same neglect.

*Caswell v. Allen*, 7 Johns. 63.

Where they are required to "audit and allow" the accounts of a class of public officers for their salaries, they have no discretion to exercise, but must allow the salary as fixed by law. Where such an account was presented to the board and was not audited, the resolution for its allowance being lost, each member voting against it is liable to the above penalty.

*Morris v. The People*, 3 Denio, 381.

If the facts of such refusal are undisputed, the liability of the member is a conclusion of law; the judge need not submit the question to the jury.

*Id.* See, also, *In re Murphy*, 60 How. 258.

Where they neglect to perform any duty required by law, *mandamus* lies to compel them to meet again and perform it.

People, *ex rel.* Scott, v. Supervisors, 8 N. Y. 317.

Boards of supervisors cannot bind their counties by an act not within the limits of the express powers conferred upon them by statute. They cannot allow a claim on any notions of their own as to its equity.

Chemung Canal Bank v. Board of Supervisors of Chemung Co., 5 Denio, 517.

The action of the board of supervisors in attempting by resolution to delegate to a *committee* composed of five of its members the right to locate and purchase a site for the "Children's Home," where, in their judgment, the interests of the county would be best subserved, and in their discretion to incur indebtedness upon the county therefor, and for the erection of a building on such site, with all other and further action whether by the board or by the committee, having in view the carrying into effect the resolution, is without sanction of law and void.

People, *ex rel.* Kimball, v. Supervisors, 25 Hun, 181.

**§ 563. To Appoint Clerk, etc.**—Boards of supervisors shall as often as necessary, appoint some proper person clerk, who shall hold his office during their pleasure.

See *post*, chapter X.

## CHAPTER X.

### GENERAL STATUTES RELATING TO THE BOARD OF SUPERVISORS.

Sec. 564. Revised Statutes.  
565. Laws of 1838, chap. 314.  
566. Laws of 1839, chap. 369.  
567. Laws of 1848, chap. 164.  
568. Laws of 1849, chap. 194.  
569. Laws of 1880, chap. 336.  
569a. Laws of 1855, chap. 249.  
570. Laws of 1858, chap. 190.  
571. Laws of 1869, chap. 855.  
572. Laws of 1875, chap. 251.

Sec. 573. Laws of 1875, chap. 482.  
574. Laws of 1879, chap. 275.  
575. Laws of 1880, chap. 175.  
576. Laws of 1882, chap. 317.  
577. Laws of 1883, chap. 346.  
578. Laws of 1885, chap. 160.  
579. Laws of 1886, chap. 173.  
579a. Laws of 1886, chap. 316.  
580. Laws of 1886, chap. 355.  
581. Laws of 1886, chap. 644.

#### *Digest of decisions under the above acts.*

Giving the more important cases, not mentioned elsewhere in this book.

Sec. 582. Under Revised Statutes.  
583. Under Laws of 1838, chap. 314.  
584. Under Laws of 1849, chap. 194.

Sec. 585. Under Laws of 1868, chap. 442.  
586. Under Laws of 1869, chap. 855.  
587. Under Laws of 1875, chap. 482.

#### *Taxes.*

A statement of the amount of assessment for each county, as fixed by the board of equalization (the State board) shall be certified by said board and deposited in the office of the comptroller as soon as completed, and before the tenth day of October in each year. The comptroller shall immediately ascertain from this assessment the proportion of State tax each county shall pay, and send a statement of the amount by mail to the county clerk and the chairman and clerk of the board of supervisors of each county.

If the name or residence of the chairman or clerk of the board of supervisors shall be unknown to the comptroller, he may inclose such statement in an envelope addressed to him by his name of office, and directed to the county town of the county. The county clerk shall file the statement received by him in his office, and immediately send a copy thereof to the chairman of the board of supervisors of the county.

Laws of 1859, chap. 312, § 8; 2 R. S. 1000.

The amount of State tax which each county is to pay, as so fixed and stated by the comptroller as aforesaid, shall be raised and collected by the annual collection of taxes in the several counties, in the manner now prescribed by law.

Id., § 9.

The moneys necessary to defray the county charges of such county shall be levied on the taxable property in the several towns in such county, in the manner prescribed in the thirteenth chapter of this act. And in order to enable their respective county treasurers to pay such contingent expenses as may become payable from time to time, the boards of supervisors of the several counties shall annually cause such sum to be raised in advance, in their respective counties, as they shall deem necessary for that purpose.

2 R. S. 969, § 5.

If the board neglect or refuse to include and assess such taxes, *mandamus* lies to compel them to do so.

#### *Annual and Special Meetings.*

The supervisors of the several cities and towns in each of the counties of this State shall meet annually in their respective counties, for the dispatch of business

as a board of supervisors. They may also hold special meetings, at such times and places as they may find convenient; and shall have power to adjourn from time to time as they may deem necessary.

2 R. S. 926.

## § 564.

The board of supervisors of each county in this State shall have power at their annual meetings, or any other meetings:

1. To make such orders concerning the corporate property of the county as they may deem expedient;
2. To examine, settle and allow all accounts chargeable against such county, and to direct the raising of such sums as may be necessary to defray the same;
3. To audit the accounts of town officers and other persons against their respective towns, and to direct the raising of such sums as may be necessary to defray the same; and,

See note A.

4. To perform all other duties which may be enjoined on them by any law of this State.

2 R. S. 926.

### *Quorum.*

A majority of the supervisors of any county shall constitute a quorum for the transaction of business; and all questions which shall arise at their meetings shall be determined by the votes of the supervisors present.

Certain questions require two-thirds of all elected, and others the vote of a majority elected. See *post*.

### *Meetings, Public.*

The board of supervisors shall sit with open doors, and all persons may attend their meetings.

### *Chairman.*

They shall, at each annual meeting, choose one of their number as chairman, who shall preside at such meeting, and at all other meetings held during the year. In case of his absence at any meeting, the members present shall choose one of their number as a temporary chairman.

### *May Administer Oath.*

Every chairman shall have power to administer an oath to any person, concerning any matter submitted to the board, or connected with their powers or duties.

2 R. S. 926.

### *Clerk to be Appointed.*

Each board of supervisors shall, as often as may be necessary, appoint some proper person to be their clerk, who shall hold his office during their pleasure, and whose general duty it shall be:

1. To record in a book to be provided for the purpose, all the proceedings of the board;
2. To make regular entries of all the resolutions or decisions, on all questions concerning the raising or payment of moneys;
3. To record the vote of each supervisor on any question submitted to the board, if required by any member present; and,
4. To preserve and file all accounts acted upon by the board.

Id. 927.



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The clerk shall receive a reasonable compensation for his services, to be fixed by the board of supervisors, and to be paid by the county.

Id., § 10.

The books, records and accounts of the boards of supervisors shall be deposited with their clerk, and shall be open, without reward, to the examination of all persons.

Id., § 11.

### *Accounts to be Filed.*

It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, the amount so audited and allowed and the charges for which the same was allowed; and he shall also deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person six cents for every folio of one hundred and twenty-eight words contained in such copy.

Id., § 12.

It shall be the duty of the several boards of supervisors, as often as shall be necessary, to cause the court-house and jail of their respective counties, to be duly repaired, at the expense of such counties; but the sums expended in such repairs shall not exceed five hundred dollars in any one year.

Id., § 13.

This amount has been enlarged by subsequent laws.

See Laws 1838, chap. 314, § 1, subd. 3, and Laws 1875, chap. 482, § 1, subd. 1.

### *Solitary Cells.*

They shall also cause to be prepared within the jails of their respective counties, or elsewhere, at the expense of such counties, so many solitary cells for the reception of convicts who may be sentenced to punishment therein, as the court of common pleas of the county may direct.

2 R. S. 927, § 14.

Section 15 relates to the pay of supervisors, and is superseded by the Laws of 1875, chap. 482, § 8, *post*.

### *Penalty Against Supervisor for Neglect of Duty.*

If any supervisor shall refuse or neglect to perform any of the duties which are or shall be required of him by law as a member of the board of supervisors, he shall, for every such offense, forfeit the sum of two hundred and fifty dollars.

Id., § 16.

The mayor, recorder and aldermen of the city of New York shall be the supervisors of the city and county of New York, and all the provisions of this article shall be construed to extend to them respectively except where special provisions inconsistent therewith, are or shall be made by law, in relation to the city and county of New York.

Id., 928, § 17.

## § 565.

### LAWS OF 1838, CHAP. 314.

AN ACT to enlarge the powers of board of supervisors.

### *Power to Raise Money.*

SECTION 1. The board of supervisors of each county in this State shall, in addition to the powers now conferred on them by law, have power, at their annual meeting, or when lawfully convened at any other meeting:

2 R. S. 928.

*For Bridges.*

1. To cause to be levied, collected and paid, to the treasurer of the county, such sums of money as may be necessary to construct and repair bridges therein; and to prescribe upon what plan and in what manner the moneys so to be raised shall be expended.

See decisions, *post*; 2 R. S. 928.

*Apportionment of Tax.*

2. To apportion the tax so to be raised, among the several towns and wards of their county, as shall seem to them to be equitable and just.

See Laws of 1888, chap. 346, *post*; 2 R. S. 928.

*For Court-House and Jail.*

3. To cause to be levied, collected and paid, all such sums of money as they shall deem necessary for rebuilding or repairing the court-house or jail of their county; or for building, rebuilding or repairing the clerk's office of the county, and to prescribe upon what plan and in what manner the moneys so raised shall be expended.

2 R. S. 928.

*To Appoint Special Commissioners of Highways.*

4. To appoint special commissioners to lay out public highways in those cases where they shall be satisfied that the road applied for is important, and that the authority now conferred by law upon commissioners of highways cannot or will not be exercised to accomplish the laying out of such road.

See Laws of 1848, chap. 164, § 1; 2 R. S. 928.

*Money for Roads and Bridges.*

5. To cause to be levied, collected and paid, in the manner now provided by law, such sum of money, in addition to the sum now allowed by law, not exceeding five hundred dollars in any one year, as a majority of the qualified voters of any town may at any legal town meeting have voted to be raised upon their town, for constructing or repairing roads and bridges in such town.

See Laws of 1949, chap. 194, § 4, subd. 9; Laws of 1869, chap. 855, § 1; Laws of 1875, chap. 482, § 1, subd. 6 and 29.

*Notice to be Put Up.*

§ 2. No moneys shall be raised under the authority conferred by the fifth subdivision of the preceding section, unless a written notice of the application to such town meeting to raise such amount shall be posted on the door of the house where the town meeting is to be held and also at three public places in such town for two weeks before the town meeting, and be also openly read to the electors present, immediately after the opening of the meeting.

2 R. S. 923.

*Notice to be Published.*

§ 3. All persons intending to apply to any board of supervisors for the imposing any tax pursuant to the first section of this act, except in cases under the fifth subdivision of that section, shall cause a notice of such application to be published once in each week for four successive weeks immediately preceding the meeting of the board of supervisors at which such application shall be made, in a newspaper printed in such county; but if no newspaper be printed in the county, then such notice shall be published, in like manner, in some public newspaper printed nearest thereto.

Id.

*Special Commissioners to be Paid.*

§ 4. The supervisors shall have power to provide for the payment to the special commissioners to be appointed under the fourth subdivision of the first section of this act, for their time and expenses. The decisions made by said commissioners may be appealed from, and reviewed in the same manner and with like authority as is allowed by law in the cases of roads laid out by the commissioners of highways of any town. The roads so to be laid out by such special commissioners, or the same as settled on appeal, shall be recorded, opened and worked as public highways of the towns in which they are respectively situated in the same manner as other highways of the town are now required by law to be recorded, opened and worked.

Id. 929.

*Special Meetings of Board.*

§ 5. Special meetings of the board of supervisors of any county may be called by the clerk of the board at any time, on the written request of a majority of the supervisors of the county.

Id.

**§ 566.**

LAWS OF 1839, CHAP. 369.

AN ACT relative to boards of supervisors, and to the town of Vernon in the county of Oneida.

*Names of Claimants to be Published.*

SECTION 1. It shall be the duty of the board of supervisors in each county in this State, annually to publish in one or more public newspapers in such county, the name of every individual who shall have had any account audited and allowed by said board, and the amount of said claim as allowed together with the amount claimed, and also their proceedings upon the equalization of the assessment-roll.

Id. 929.

**§ 567.**

LAWS OF 1848, CHAP. 164.

AN ACT to amend an act entitled "An act to enlarge powers of the boards of supervisors," passed May 18, 1838.

*Provision as to Opening Public Highways.*

SECTION 1. The power given to boards of supervisors by subdivision four of section one of the act entitled "An act to enlarge the powers of boards of supervisors," passed April 18, 1838, to appoint special commissioners to lay out public highways, shall not be exercised by any board of supervisors, unless the applicant therefor shall prove to such board of supervisors the service of a notice in writing, on a commissioner of highways of each town through and into which any such highway is intended to be laid, at least six days previous to presenting such application, specifying therein the object thereof, and names of persons proposed to be appointed such commissioners.

Id. 929.

## § 568.

## LAWS OF 1849, CHAP. 194.

AN ACT to vest in the board of supervisors certain legislative powers, and to prescribe their fees for certain services.

*Power of the Board to Alter the Bounds and to Erect New Town; Copy of Map and Certificate to be Filed.*

SECTION 1. The board of supervisors of the several counties in this State, the county of New York excepted, at their annual meeting, shall have power within their respective counties, by a vote of two-thirds of all the members elected, to divide or alter in its bounds, any town, or erect a new town, but they shall not make any alterations that shall place parts of the same town in more than one assembly district, nor where it is proposed to divide towns into two or more towns, unless upon application to the board, as hereinafter provided, of at least twelve freeholders of each of the towns to be affected by the division, and upon being furnished with a map and survey of the towns to be affected, showing the proposed alterations, and if the application be granted, a copy of said map, with a certified statement of the action of said board thereunto annexed, shall be filed in the office of the secretary of State, and it shall be the duty of the secretary to cause the same to be printed with the laws of the next legislature after such division takes place, and cause the same to be published in the same manner as other laws are published.

As amended by Laws 1872, chap. 319; 2 R. S. 929.

§ 2 repealed.

*Name of New Town to be Designated and First Meeting Appointed.*

§ 3. Whenever the board of supervisors shall erect a new town in any county, they shall designate the name thereof, the time and place of holding the first annual town meeting therein, and three electors of such town whose duty it shall be to preside at such meeting, appoint a clerk, open and keep the polls, and exercise the same powers as justices of the peace when presiding at town meetings, and in case any of the said electors shall refuse or neglect to serve, the electors of the said town present at such meeting, shall have power to substitute some elector of said town, for each one so refusing or neglecting to serve. Notice of time and place of such town meeting signed by the chairman or clerk of the board of supervisors shall be posted in four of the most public places in said town, by the persons so designated to preside at such town meeting, at least fourteen days before holding the same. They shall also fix the place for holding the first town meeting in the town or towns from which such new town shall be taken. But nothing in this act shall affect the rights or abridge the term of office of any justice of the peace or other town officer in any such town, whose term of office has not expired.

2 R. S. 930.

*Powers of Board.*

§ 4. The said boards of supervisors shall have power, and they are hereby authorized:

Id.

*Lands may be Bought to erect Poor-houses on.*

1. At any meeting thereof lawfully assembled, to purchase for the use of said county any real estate, necessary for the erection of buildings, and for the support of the poor of such county.

Id.

*To erect Court-house, etc.*

2. To purchase any real estate necessary for a site for a court-house, jail, clerk's or surrogate's office, or other public county buildings in said county.

Id.

*Sites to be Fixed.*

3. To fix upon and determine the site of any such buildings, where they are not already located.

Id.

*Sale of Lands.*

4. To authorize the sale or leasing of any real estate, belonging to such county, and prescribe the mode in which any conveyance shall be made.

5. (See Laws of 1885, chap. 160.)

Id.

*Erection of Buildings.*

6. To cause to be erected necessary buildings for poor-houses, jails, clerk's and surrogate's offices or other county buildings, and prescribe the manner of erecting the same.

Id.

*Raising Money by Tax.*

7. To cause to be raised by tax upon such county any sum of money to erect any of the buildings mentioned in this act, not exceeding the sum of five thousand dollars in any one year.

See Laws of 1875, chap. 482, § 1, subd. 1; 2 R. S. 930.

*Borrowing Money for County Use.*

8. To borrow money for the use of such county, to be expended in the purchase of any real estate, or for the erection of any such buildings, and to provide for the payment thereof, with interest, by tax upon such county, within ten years from the date of such loan, in yearly installments or otherwise.

See Id.

*For Town Use.*

9. To authorize any town in such county by a vote of such town to borrow any sum of money not exceeding four thousand dollars in one year, to build or repair any roads or bridges in such town, and prescribe the time for the payment of the same, which time shall be within ten years, and for assessing the principal and interest thereof upon such town.

See Laws of 1869, chap. 855, § 1; Laws of 1875, chap. 482, § 1, subds. 6, 29, which allow the amount to be increased; 2 R. S. 930.

*Poor.*

10. To abolish or revive the distinction between the town and county poor of such county.

2 R. S. 930.

*Annual Meeting.*

11. To fix the time and place of holding their annual meetings.

Id. 931.

*Collection of Taxes.*

12. To extend and determine by resolution at their annual meeting the time when each collector in said county shall make return to the county treasurer; but such time shall in no case extend beyond the first day of March then next.

See Laws of 1885, chaps. 10 and 32; 2 R. S. 931.

*Laws to Destroy Wild Beasts, Thistles, etc.*

13. To make such laws and regulations as they may deem necessary and provide for the enforcing of the same, for the destruction of wild beasts, thistles and other noxious weeds, to prevent the injury and destruction of sheep by dogs, and to levy and enforce the collection of any tax upon dogs, and to direct the application of such tax, and to provide for the protection of all kinds of game, of shell and other fish within the waters of their respective counties, and all laws of this State now existing in relation to preserving or destroying, killing and taking wild beasts or birds, fish, eels and shell fish, are hereby repealed, such repeal to take effect on the first day of January, in the year eighteen hundred and fifty.

See Laws of 1878, chap. 49; 2 R. S. 931.

*County Officer to Report.*

14. To require any county officer, or any officer whose salary is paid by the county, to make a report under oath to them, on any subjects or matters connected with the duties of their offices; and the said officers are hereby required to make such report whenever called upon by resolution of any such board; and if any such officer neglect or refuse to make such report he shall be deemed guilty of a misdemeanor.

2 R. S. 931.

*Boards of Supervisors may Establish Disputed Town Lines; Publication Thereof.*

15. To fix, establish, locate and define disputed boundary lines between the several towns in their respective counties, by a resolution to be duly passed by a majority of all the members elected to such board. A notice of intention to apply to such board, to fix, establish, locate and define such disputed boundary line, particularly describing the same, and the line as proposed to be acted upon by such board, signed by the supervisor, town clerk and two or more of the justices of the peace of some one of the towns to be affected by such resolution, shall be published for four weeks successively before the meeting of the board at which such resolution is to be presented, in all newspapers printed in such county, if not more than three in number, but if they exceed three in number, then in the three having the largest circulation in such county. A copy of such printed notice shall also be served personally, at least fifteen days before the meeting of such board, on the supervisor and town clerk of each of the other towns to be affected thereby. A copy of the resolution as adopted, which shall contain the courses, distances and fixed monuments specified in such boundary line or lines, together with a map of the survey thereof, with the courses, distances and fixed monuments referred to therein, plainly and distinctly marked and indicated thereon, shall be filed in the office of the secretary of State within thirty days after the adoption of such resolution, and it shall be the duty of such secretary to cause the said resolution to be printed with the laws of the next legislature, after the adoption thereof. A copy of such resolution shall also, within the same time, be published for two successive weeks in all the newspapers printed in such county, but if they exceed three in number, then in such three as the said board shall designate for that purpose, the expenses of such publication to be paid by the town causing the publication of the notice of the application to such board.

Added by Laws of 1870, chap. 361; 2 R. S. 931.

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### *Board to Fix Amount for Taxes Paid in Case of Disputed Boundary Lines of Towns.*

16. To ascertain, fix and determine the amount to which any person, persons or corporation is equitably entitled to receive back from any town or towns for taxes paid while the boundary line between such towns was in dispute, and to levy and assess such amount upon such town or towns, and cause the same to be collected in the same manner that other taxes are levied, assessed and collected.

Added by Laws of 1873, chap. 119; 2 R. S. 931.

### *Powers in the Fourth Section by what Vote to be Exercised.*

§ 5. None of the powers prescribed in the last section shall be exercised except by a vote of a majority of all the members elected in the county, nor shall such power be exercised under the fifth, tenth and thirteenth subdivisions of said section, without a vote of two-thirds of all the members elected to such boards.

2 R. S. 932.

§ 6 repealed by chap. 160, Laws of 1885, which see.

### *Every Resolution to be Signed and Recorded.*

§ 7. Every resolution of any board of supervisors passed in pursuance of the provisions of this act shall be signed by the chairman and clerk of such board and be recorded in the book of miscellaneous records of such county.

2 R. S. 932.

### *Comptroller to Loan Money to Towns and Counties.*

§ 8. The comptroller is hereby authorized to loan to any of the towns or counties of this State, any money in the treasury belonging to the capital of the common school fund, as is authorized by this act to be borrowed by any county or town, whenever application is made to him by the treasurer of such county.

Id.

### *Securities to be Given for Loans.*

§ 9. When such moneys are loaned to such county, the treasurer thereof shall execute his official bond for the payment thereof, and when loaned to any town the supervisor thereof shall execute his official bond in like manner.

Id. 933.

### *Allowed to Supervisors for Travel, etc.*

§ 10. Each supervisor shall receive over and above the *per diem* compensation now allowed by law, eight cents per mile for all necessary travel in the discharge of his official duties, and three cents for each name (for making a copy of the assessment-roll of his town and making out the tax bill to be delivered to the collector), for the first hundred names, two cents per name for the second hundred names, and one cent per name for each name over two hundred. But no *per diem* allowance shall be made to any supervisor while employed in making out such copy of tax.

Superseded by Laws of 1875, chap. 482, § 8, as to pay for attending board of supervisors and copying roll.

### *Repeal.*

§ 11. Nothing in this act contained shall abridge the powers of any board of supervisors which they now possess, and which are not inconsistent with the provisions of this act, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

2 R. S. 933.

## § 569.

LAWS 1880, CHAP. 336.

AN ACT supplemental to chapter one hundred and ninety-four of the laws of eighteen hundred and forty-nine, entitled "An act to vest in the board of supervisors certain legislative powers, and to prescribe their fees for certain services," and to repeal chapter five hundred and ninety-seven of the laws of eighteen hundred and seventy, amendatory of said act.

*Formation of New Towns and Apportionment of Bonds for Construction of Railroads.*

SECTION 1. Whenever any board of supervisors shall form a new town within its respective county, from parts of other towns, or town which shall have bonded to aid in the construction of any railroad under any act authorizing the same, and such bonds, or any part thereof, shall remain unpaid, or when any board of supervisors shall change the line of any town which shall have bonded to aid in the construction of any railroad in this State, and such bonds, or any part thereof, shall remain unpaid, the new town so formed and the part or parts taken from a town and added to another town shall pay a proportionate share of such bonds as shall remain unpaid, which share shall be ascertained from the assessed valuation of such town or towns as contained in the last equalized valuation of the assessment-roll, made prior to the formation of such town or the change of any such town line.

Id.

*Railroad Commissioners to Render Statement.*

§ 2. It shall be the duty of the railroad commissioners of the town, any part of whose territory shall have been detached as aforesaid, to render a true statement to the board of supervisors, as now required by the general railroad act, of the amount necessary to pay the proportionate share belonging to the territory detached from their town, which may be then coming due, and the board of supervisors shall add such proportionate share to the sums to be collected from the town so formed, or to the part or parts which shall have been detached from a town and added to another town, to be collected as prescribed by law.

Id.

*Assessors to Make List of Taxable Inhabitants and Lands.*

§ 3. The assessors of the town or towns to which shall have been added a part of another town shall yearly, until such bonds be paid, make a separate and distinct list of the taxable inhabitants and lands contained in the territory so annexed in the assessment-roll of the said town, in all respects similar in form and manner to the assessment-roll as now made. Said list shall be designated in such roll "List of annexed lands and inhabitants."

Id.

*Moneys to be Paid by Supervisor to Railroad.*

§ 4. Such proportionate share of moneys collected as provided in the second section of this act shall be paid by the supervisor of the town wherein collected to the railroad commissioners of the town or towns from which such territory shall have been detached, and such commissioners shall use such moneys for the payment of the bonds issued in the same manner they are required to use the moneys raised in their own town.

Id. 934.

*In what Cases Provisions of Act shall Apply.*

§ 5. The provisions of this act shall apply to all cases where a new town shall have been formed, or the line of any town shall have been changed by the board of supervisors of any county since the first day of January, 1879, where no proceedings have been taken under chapter 597 of the Laws of 1870.

Id.



**569a.**

LAWS OF 1855, CHAP. 249.

AN ACT to authorize boards of supervisors to adopt seals, and to make certified copies of their records and proceedings evidence.

*Seal.*

SECTION 1. The board of supervisors of any county in this State may adopt a seal, and when so adopted the clerk of such board shall cause a description thereof, together with an impression therefrom, to be filed in the office of the county clerk and in the office of the secretary of State, and the same shall thereupon be the seal of the board of supervisors of such county.

Id.

*Records, When Evidence.*

§ 2. Copies of all papers duly filed in the office of the clerk of the board of supervisors of any county, and transcripts from the books of records kept therein, certified by such clerk, with the seal of office affixed, shall be evidence in all courts and places, in like manner as if the originals were produced.

Id.

**§ 570.**

LAWS OF 1858, CHAP. 190.

AN ACT to enlarge the powers of the Boards of Supervisors.

*Witnesses may be Summoned by Chairman of Board.*

SECTION 1. Whenever the board of supervisors of any county shall deem it necessary or important to examine any person as a witness, upon any subject or matter within the jurisdiction of such board, or to examine any officer of the county in relation to the discharge of his official duties, or to the receipt or disbursement by him of any moneys, or concerning the possession or disposition by him of any property belonging to the county; or to use, inspect or to examine any book account, voucher or document, in the possession of such officer or other person, or under his control relating to the affairs or interests of such county, the chairman or president of such board shall issue a subpoena in proper form, commanding such person or officer to appear before such board at a time and place therein specified, to be examined as a witness, and such subpoena may contain a clause requiring such person or officer to produce on such examination all books, papers and documents in his possession, or under his control, relating to the affairs or interests of the county.

Id.

*Duty of Sheriff.*

§ 2. It shall be the duty of the sheriff, or any deputy sheriff or constable of the county, to whom the subpoena may be delivered, to serve the same by reading it to the person named therein, and at the same time delivering him a copy thereof; and his official return thereon of the time and place of such service shall be *prima facie* evidence thereof.

Id. 935.

*Committee, Power of.*

§ 3. Whenever the board of supervisors shall have appointed any member of their body a committee upon any subject or matter of which the board has jurisdiction, and shall have conferred upon such committee power to send for persons and papers, the chairman of such committee shall possess all the powers, and be liable to all the duties herein given to and imposed upon the chairman or president of the board of supervisors.

Id.

*Persons Subpœnaed.*

§ 4. Whenever any person duly subpœnaed to appear and give evidence, or to produce any books and papers as herein provided, shall neglect or refuse to appear, or to produce such books and papers, according to the exigency of such subpœna, or shall refuse to testify before such board or committee, or to answer any question which a majority thereof shall decide to be proper and pertinent, he shall be deemed in contempt, and it shall be the duty of the chairman of the board or of the committee, as the case may be, to report the facts to the county judge or to the judge of the supreme court, or of the superior court, or of the court of common pleas of any of the cities of this State, who shall thereupon issue an attachment in the form usual in the court of which he shall be judge, directed to the sheriff of the county where such witness was required to appear and testify, commanding the said sheriff to attach such person, and forthwith bring him before the judge by whose order such attachment was issued.

Id.

*Attachment.*

§ 5. On the return of the attachment, and the production of the body of the defendant, the said judge shall have jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted as in case of a witness subpœnaed to appear and give evidence on the trial of a civil cause before a circuit or special term of the supreme court.

Id.

*Board may Adjourn, etc.*

§ 6. The board of supervisors and any committee appointed by the board with power to send for persons and papers may adjourn from time to time, and such committee may hold meetings in pursuance of such adjournment, or on call of the chairman thereof, during the recess, or after the final adjournment of the said board of supervisors; but whenever an attachment shall have been issued according to the provisions of this act, and is not returned, such adjournment of the board or committee at whose instance it was issued shall be to a time and place certain, of which notice shall be given by the chairman to the judge before whom the said attachment shall be returnable, and in such case, if the person against whom it issued shall be arrested, he shall not be discharged from custody until he shall have entered into a bond to the board of supervisors of the county, in the penalty of two hundred and fifty dollars, with two sufficient sureties to be approved by the said judge, with a condition that he will appear and submit to an examination before such board or committee, as the case may be, at the time and place to which it shall have adjourned.

Id.

*Bonds.*

§ 7. Such bond shall be filed in the office of the clerk of the county, and if default shall be made in the condition thereof, it shall be the duty of the district attorney of said county to sue for and collect the same, and the money when received, and all moneys received for fines and penalties under and by virtue of the provisions of this act, shall be paid into the treasury of the county for the benefit of the poor of said county.

Id.

*Orders, Decisions, etc.*

§ 8. All orders, decisions and judgments made and given in proceedings under this act, by any judge out of court or term, shall be in writing subscribed by him, and shall be filed in the office of the clerk of the county where such proceedings are had, and the clerk shall thereupon enter the proper and necessary orders and rules, and such orders, decisions and judgments shall have the like force and effect as if made and given by the court at a regular term or session thereof.

Id.

*Power to Administer Oaths.*

§ 9. The chairman of the board of supervisors, and the chairman of any committee of such board shall severally have power to administer oaths and affirmations to witnesses to be examined before such board or committee, and every witness so examined shall be obliged to answer all such questions as he would be held bound to answer in the same case in a court of justice according to the rules of evidence; but the testimony of any witness examined under the provisions of this act shall not be given in evidence or used against him, on the trial of any indictment or criminal prosecution, other than for perjury committed on such examination.

Id. 936.

## § 571.

## LAWS OF 1869, CHAP. 855.

AN ACT to extend the powers of boards of supervisors, except in the counties of New York and Kings.

*Boards of Supervisors may Authorize Towns to Borrow Money for Roads and Bridges—Board of Supervisors to Prescribe Form of Obligation—Tax—Town Officers to Meet Annually to Determine Amounts, etc.—Certificate to be Indorsed on Bonds—Town Clerk to Keep Record of Bonds—Bonds to be Delivered to Supervisor—Proceeds, how to be Applied—Excess, how to be Applied.*

SECTION 1. The boards of supervisors of each county in this State, except New York and Kings, shall have power, at their annual meeting, or at any other regular meeting, to authorize the supervisor of any town in said county, by and with the consent of the commissioner or commissioners of highways, town clerk and justices of the peace of such town, to borrow such sum of money for and on the credit of each town, not exceeding, however, in any year, the amount of one-half of one per cent on the assessed valuation of the taxable property of the town for such year, as the said town officers may deem necessary to build or repair any road or roads, or bridge or bridges in such town, or which shall be partly in such town and partly in an adjoining town, or to pay any existing debt incurred in good faith by or on behalf of such town for such purpose, before the passage of this act; and the said board of supervisors shall have power to prescribe the form of obligation to be issued on any such loan and the time and place of payment, the time not to exceed ten years from the date of such obligation, and the rate of interest thereon not exceeding six per cent per annum. And the said board of supervisors have power and it shall be their duty from time to time, as the said obligations shall become due and payable, to impose upon the taxable property of such town sufficient tax to pay the said principal and interest of such obligations according to the terms and conditions thereof. The town officers hereinbefore mentioned shall meet at the town clerk's office in the town for which they are elected or appointed, on the first Monday of March in each year at ten o'clock in the morning, to determine what amount, if any, shall be borrowed on the credit of such town for the purposes contained in the first section of the act hereby amended, and for what roads or bridges such amount shall be borrowed or appropriated, and for the same purposes a meeting or meetings of the said officers may and shall also be held upon the call of the town clerk, whose duty it should be to call the same within one week after the receipt of a written request of twelve tax payers of the town therefor, and any such meeting may be adjourned from time to time, either for want of a quorum or in default of any final determination of any question arising concerning such appropriation, but no such meeting shall be held subsequent to the first Monday of October in each year. The bonds authorized by this act shall have indorsed thereon a certificate signed by the town clerk of the town for which they are issued, to the effect that such bonds are issued with the consent of the town officers herein mentioned, at a meeting the date of which shall be mentioned in such certificate. The town clerk of any town on account of which such bonds are issued shall keep a record showing the date and amount of such bonds, the time and place when the same are made payable, and the rate of interest thereon. Such bonds shall be delivered to the supervisor of the town, who shall dispose of the same for not less than the par value thereof, and pay the proceeds thereof to the commissioner or commissioners of highways of such town, to be used by him

or them for the purposes for which the same were appropriated; but not more than five hundred dollars of such proceeds shall be expended upon any one road or bridge except under and in pursuance of a contract to be made by the contractor with the commissioner or a majority of the commissioners of highways of such town for the construction or repair of such road or bridge, which contract shall be approved by a majority of the town auditors of such town, neither of whom shall be interested in such contract. Any amount borrowed and appropriated, pursuant to the provisions of this act, for the repair or construction of any road or bridge in any town, and which it shall not be necessary to use for such purpose, shall be applied by the commissioner or commissioners of highways to the repair of any other road or bridge in such town.

As amended by Laws of 1882, chap. 250.

This act shall take effect September 30th, 1882.

See § 10 of this act; 2 R. S. 936.

*Use of Abandoned Plank and Turnpike Roads—Improvement of Highways—Erection, Repair and Purchase of Bridges—Borrowing of Money—Two-Thirds Vote Requisite—Affirmative Vote of Resident Supervisor Requisite to Pass Special Ordinance.*

§ 2. Such boards of supervisors shall have power to provide for the use of abandoned turnpike, plank or macadamized roads within any town as public highways; and for the improvement of any public highway laid out in pursuance of law; and for the location, erection, repair or purchase of any bridge, except over navigable streams; and for apportioning the expense of any public road or bridge upon such town as may be just; and for the borrowing of money by any town or towns or by the county for the purpose aforesaid; or for general purposes in anticipation of taxation for such purpose authorized by law; but jurisdiction in the cases aforesaid shall not be exercised without the assent of two-thirds of all the members elected to such board, to be determined by yeas and nays, which shall be entered on its journal, and no special ordinance, relating to any one town or ward only, shall become operative unless it shall receive the affirmative vote of the supervisor representing such town or ward.

2 R. S. 937.

*Rates of Toll upon Plank and Turnpike Roads, and upon Ferries and Bridges—Notice of Application for Increase of Toll, to be Published.*

§ 3. Such boards of supervisors shall have power, by a like vote of two-thirds, to authorize an alteration, reduction or change of the rates of toll charged or received by any turnpike, plank or gravel road, or other toll road within such county, or by any bridge company or ferry within such county, or, if within more than one county, then by joint action with the supervisors of such counties, provided such alteration shall be asked for by the directors, trustees or owners of such road, bridge or ferry; and provided further, that no increase of toll shall be so authorized unless notice of intention to apply for such increase shall have been published in each of the newspapers published in such county, once in each week for six successive weeks next before the annual election of supervisors in such county; and any alteration in rates of toll authorized by any board of supervisors may be changed or modified by any subsequent board, on their own motion, by a like vote of two-thirds of all the members elected to such board.

Id.

*Town Meeting may Vote Moneys for Soldiers' Monument—Vote of Majority of Tax Payers Requisite Therefor—Action of Board of Supervisors Thereon—Moneys, how Expended—County Monuments—Power of Supervisors to Alter or Repeal Action Thereon.*

§ 4. It shall be competent for the electors of any town, at any regular town meeting; or of any county at any regular election, to vote any sums of money to be designated by a majority of all the electors voting at such town meeting or election, for the purpose of erecting a public monument within such town, or for

the county as the case may be, in memory of the soldiers of such town or county, or in commemoration of any public person or event; but no debt shall be created, nor shall any tax be imposed on any town or county for such purpose, unless the same shall have been voted for by a majority of the legal voters of the town or county affected nor unless the object and expenditure shall be approved of by a vote of two-thirds of the supervisors elected in such county. The board of supervisors may legalize the vote of any town or county for such purpose; and after such vote, they may raise or authorize the specified sum or sums of money to be raised for such purpose in any of the modes provided for by law for raising moneys for towns or counties. All moneys expended by any town, for the purposes authorized by this section, shall be expended under the direction of the supervisor, town clerk and justices of the peace of such town, or of a majority of them, or by a commissioner or commissioners for that purpose appointed by such town officers, or by a majority of them. If the monument to be erected shall be a county monument, then the money to be expended therefor shall be under the control of a commissioner or of commissioners appointed by the board of supervisors to superintend the erection of such monument; and no town or county officer or commissioner appointed or acting under this section shall receive any compensation for services rendered thereunder as such officer or commissioner. The board of supervisors of any county shall have power to alter, repeal or amend any resolution or ordinance passed under this section, and to stay further expenditure upon any monument within such county being erected at the expense of such county or of any town or towns within such county.

Id. See Laws of 1886, chap. 173, *post*.

*Informal Action of Town Meetings, and of Town Officers, how Legalized — Correction of Error in Assessments, etc. — Appeals — Taxes so Refunded, how Apportioned.*

§ 5. The board of supervisors of any county, except New York, Kings and Albany, may, by a two-thirds vote of all the members elected thereto, legalize the informal acts of any town meeting in raising money for any purpose for which such money is authorized to be raised by law, and by a like vote to legalize the irregular acts of any town officer, performed in good faith, and within the scope of his authority; and also, to correct any manifest clerical or other error in any assessments or returns made by any town officer to such board of supervisors, or which shall properly come before such board for their action, confirmation or review; and it may refund to any person the amount collected from him of any tax illegally or improperly assessed or levied. In raising the amount so refunded, such board shall adjust and apportion the same upon the property of the several towns and wards of the county as shall be just, taking into consideration the portion of State, county, town and ward tax included therein, and the extent to which each town or ward has been benefited thereby.

As amended by Laws of 1885, chap. 326.

A similar law for Kings county was passed in 1886, chap. 306, Laws 1886

*Bills of Justices of Peace in Criminal Proceedings, What to Contain — Appeals from Action of Town Auditors in Auditing Justices' Bills — Decision of Board of Supervisors to be Final.*

§ 6. The bills rendered by justices of the peace for services in criminal proceedings shall, in all cases, contain the name and residence of the complainant, the offense charged, the action of the justice on such complaint, the constable or officer to whom any warrant on such complaint was delivered, and whether the person charged was or was not arrested, and whether an examination was waived or had, and witnesses sworn thereon; and the account shall also show the final action of the justice in the premises. At any time within fifteen days after the board of town auditors of any town shall have filed with the town clerk thereof the certificate of accounts audited, as required by law, any tax payer of said town may appeal from the action of said board of town auditors, in auditing the account of any justice of the peace, to the board of supervisors of the county. Said appeal shall be made by serving notice thereof, in writing, on the town clerk of the town and on the clerk of the board of supervisors within the time above lim-

ited. The said supervisors shall thereupon audit the accounts of such justices of the peace, and their decision in the auditing and allowing of said account shall be final.

As amended by Laws of 1871, chap. 274.

*Charge of Books and Records of County—Copying of Records by County Clerk, Surrogate, etc.—Payment Therefor—Judge to Order and Approve of Work.*

§ 7. Such boards of supervisors shall have, subject to the legal rights of the officers using the same, the general charge of the books and records of the county, and shall provide for their safe-keeping. They may authorize any county clerk, surrogate or other county officer having the official custody or control of any such books, or of any records, maps or public papers, to cause copies thereof to be made and certified for the public use, and it shall be their duty to cause such copies to be made, whenever, by reason of age or exposure, or any casualty, the same shall be necessary for the public service, and the said board of supervisors are authorized to cause any officer making such transcripts or copies by their order for the public use to be paid such sum therefor as may be just, but which in no case shall exceed a sum to be certified by the county court as reasonable for the service rendered. And the said supervisors shall not accept and pay for any service rendered under this section until the work shall be examined and approved of as to its manner and form of execution by the county judge or by a justice of the supreme court of the district; nor shall any board of supervisors order any such work to be done until the county judge or such justice of the supreme court shall, after an examination, certify that such work is necessary for the security and safety of the public records.

2 R. S. 939.

*Auditing of Accounts of Superintendents of the Poor, etc.—Compensation of Supervisors During Sessions of Boards.*

§ 8. Such boards of supervisors shall have the power, and it shall be their duty, to audit the accounts of the superintendents of the poor of the county, and to examine the accounts of subordinate county officers; and each supervisor, whose compensation is not specially provided for by law, shall be entitled to charge and receive three dollars per day for each full day's services during the sessions of the board, besides mileage now allowed by law; but such supervisor shall not be entitled to receive any other compensation whatever, except as the same is specially provided for by law

Id.

For pay of supervisors, see Laws of 1875, chap. 482, § 8; as to auditing accounts of superintendents of the poor, see Laws of 1886, chap. 355.

*On Written Application of Town Officers, Queens County Board of Supervisors may Authorize Supervisor of Town to Borrow Money to Lay Out, etc., Roads—Tax to be Imposed to Pay Principal and Interest as it Falls Due—Proceedings to Purchase Toll Roads, etc.—Notice to be Published.*

§ 9. The board of supervisors of Queens county, in addition to the powers conferred by the first section of this act, shall have power, at any meeting of which notice is given as hereinafter provided, to authorize the supervisors of any town or towns in such county, on written applications of the supervisor, town clerk, justices of the peace and commissioners of highways, or a majority of them, of such town, or if more than one town is affected thereby, then of said officers, or a majority of them, of each of such towns, to borrow such sum of money for and on the credit of such town or towns as the said town officers may deem necessary to lay out, build, widen, grade, macadamize or repair any road or roads, or to purchase, for public use, any plankroad, turnpike or toll road or toll bridge in such town or towns, or to pay any existing debt incurred in good faith by or on behalf of such town, for such purpose before the passage of this act; and the said board of supervisors shall have power to prescribe the form of obligation to be issued on any such loan, and the time and place of payment, the time not to exceed ten

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years from date of such obligation, and the rate of interest thereon not exceeding seven per cent per annum. And the said board of supervisors shall have power, and it shall be their duty from time to time, as the said obligations shall become due and payable, to impose upon the taxable property of such town sufficient tax to pay the said principal and interest of such obligations according to the terms and conditions thereof. In case the bridge or road so laid out, built, widened, graded, macadamized or repaired shall be situated in two or more towns in said county, then the said board of supervisors shall have the power to apportion the expense thereof among such towns in such proportions as may be just. If in the case of the building, widening or improving any road, or of the purchase for public use of any toll road or toll bridge, the supervisors of the town or towns in which such road is located shall not be able to agree with the owners of the land required for such improvement or of such toll road or toll bridge, as to the price to be paid therefor, then the board of supervisors of the county shall have power to apply to the supreme court of the judicial district in which said county is situated, for the appointment of three commissioners to appraise and determine the value of the land so required, or of such toll road or toll bridge. Such application and appointment shall be made as in proceedings by railroad corporations to acquire title to real estate under existing statute, and the commissioners so appointed shall act and make report, and the owners of such lands or roads or bridges shall have similar right of appeal, and all incidental proceedings shall be conducted as in such railroad proceeding. When the value of said lands or roads or bridges shall in such manner have been finally determined, the said lands or roads or bridges shall vest in the town or towns in which they are respectively located, upon payment by said town or towns of said determined value, to the owners thereof, within six months after such final determination. Upon receiving the written application of town officers hereinbefore mentioned, the said board of supervisors shall publish a notice in every newspaper published in the town or towns affected by such application, which notice shall contain a copy of such application and shall name a time and place when and where said board will meet to consider such application.

Added by Laws of 1872, chap. 285.

### *When Consent of Trustees Must be Obtained.*

§ 10. In case the road or roads, or bridge or bridges, referred to in the first section of this act shall be wholly or partly within the limits of any incorporated village, the consent of a majority of the trustees of such village shall be necessary for the action of supervisors of towns under said section, in addition to the consent of the commissioner or commissioners of highways, town clerk and justices of the peace of such town.

Added by Laws of 1873, chap. 323; 2 R. S. 940.

## § 572.

### LAWS OF 1875, CHAP. 251.

AN ACT for the support and maintenance of prisoners confined upon civil process.

Sections 1 and 4 were repealed by Laws of 1877, chapter 416.

### *Supervisors may Contract with Sheriffs.*

§ 3. The board of supervisors of the counties of this State are hereby authorized and empowered to contract with the sheriff of said counties, or the jailer of the common jail therein, for the support and maintenance of such persons as may be confined in such jail upon any writ, process, or proceeding, as stated in the first section of this act, and such sheriff or jailer shall attach to all bills rendered for such support and maintenance, a list, under oath, of the number and names of the persons to whom such support and maintenance was furnished, and the length of time each person was so supported.

2 R. S. 940.

*Not to Relate to Kings or Monroe.*

§ 3. Nothing in this act shall be construed as repealing the present provisions of law relating to the care, custody, support or maintenance of such prisoners in the counties of Kings and Monroe.

Id.

## § 573.

## LAWS OF 1875, CHAP. 482.

AN ACT to confer on boards of supervisors further powers of local legislation and administration, and to regulate the compensation of supervisors

*Further Powers.*

SECTION. 1. Further powers of local legislation and administration are hereby conferred on the boards of supervisors in the several counties of this State, except in cities whose boundaries are the same as those of the county, to make and administer, within their respective counties, laws and regulations, as follows:

Id. 941.

*Real Estate for Court-House, Offices, Jails, etc., to Borrow Money—Limitation on Issue of Bonds.*

1. To purchase or otherwise acquire, for the use of the county, real estate for sites for court-houses, county clerk's offices and other buildings for county officers, and for jails and such other places of confinement as may be authorized or required by law, for the safe-keeping and employment at hard labor of offenders, and for the detention of witnesses, and of women and children held for trial for offenses when the punishment prescribed is imprisonment less than five years; and also for establishments for the care of paupers, idiots, paupers incurably insane, and other indigent persons for whose support the county shall be liable; to erect, alter, improve, purchase and receive by gift, buildings for any of such purposes, and to make such expenditures on account of such sites and buildings as may be necessary, to borrow money on the county bonds or other county obligations, for a period not exceeding fifteen years, to be paid in annual installments, for the purpose specified in this subdivision; but in all cases where a proposed issue of county bonds shall, with the amount of bonds issued under any previous authority, and still outstanding, exceed the sum of one hundred thousand dollars, no additional issue shall be authorized except in the counties of Albany, Erie and Kings, unless by the assent of a majority of all the electors of the county voting on the question at any annual election, and subject to the conditions in this act specified, to change the location of county buildings, and to sell or apply to other county use the old sites and buildings in cases where the location may be so changed, and if sold, to apply the proceeds toward the payment of obligations incurred for new sites and buildings, and in the case of a change in the location of a county court-house, to make one or more jury districts and to make such regulations in respect to the holding of the terms of courts as shall be necessary by reason of such change.

As amended by Laws of 1881, chap. 570, *sub nom.* chap. 482, subd. 1, etc. For changes in county buildings, see Laws of 1885, chap. 160, *post.* 2 R. S. 941.

*To Fix Salaries of County Officers.*

2. To fix, subject to the limitations of section 15, article 6, of the Constitution, the salaries and *per diem* allowance of county officers whose compensation may be a county charge, and which shall not be changed during the term of office of such officers respectively, and to prescribe the mode of appointment and fix the number, grades and pay of the deputies, clerks and subordinate employees in such offices.

This does not apply to county judge or surrogate, nor does it authorize them to appoint new deputies, clerks, etc., for those county officers who are not required by law to keep public offices. *People, ex rel. Masterson, v. Gallup*, 30 Hun, 501; *Spring v. Wait*, 22 id. 441.



*Supervisors Authorized to Change Location of Bridges — To Fix Rates of Toll — Draws — Joint Action of Boards — May Provide for Construction in Case of Destruction of Bridges — May Purchase Rights of Corporation in Sites and Approaches — Proviso — Construction, etc., to be at Public Expense — May Prescribe Weight to be Carried over Bridge.*

3. To authorize the location, change of location and construction of any bridge (except on the Hudson river below Waterford, and on the East river, or over the waters forming the boundaries of the State) which shall be applied for by any town or towns jointly, or by any corporation formed pursuant to the general laws of the State, or by any corporation or individual for private purposes; and in the case of a public bridge erected by a corporation, to establish the rates of toll to be collected for crossing such bridge. But in every case where any such bridge is to cross a navigable stream of water, full provision shall be made in the resolution or permission authorizing the same, for the erection and maintenance of a suitable draw to prevent any impeding of the navigation of such stream of water, and in the case of a private bridge, provision shall be made that the draw shall be kept open as may be required to permit all vessels to pass without loss of headway. Where any bridge shall be on a stream of water forming at the point of crossing the dividing line of counties, the action of the board of supervisors of each county shall be necessary to give the jurisdiction permitted by this subdivision. In case any bridge (except on the Hudson river below Waterford, and on the East river, or over the waters forming the boundaries of the State) shall have been, within one year previous to the passage of this act, or shall hereafter be destroyed by the elements or otherwise, and the expense of constructing a bridge on or so near the site of the bridge so destroyed as to supply the public necessities occasioned by the loss of the bridge so destroyed, with the necessary approaches thereto, cannot be constructed at an expense which will not exceed double the sum now authorized by law to be raised upon the taxable property of the town or towns within which the bridge thus destroyed was situate, then and in that case the board of supervisors of any county in this State (except the counties of New York, Westchester and Kings) within which such bridge was situate, may, at their discretion, without delay, provide for constructing and completing a bridge instead of the one destroyed and all necessary approaches thereto, of durable material at the earliest practicable time, on the site of the bridge so destroyed, and in case the bridge so destroyed shall have been constructed by a corporation organized pursuant to the general laws of this State, and the site upon which the same was constructed, together with the approaches thereto, shall be the property of such corporation, it shall be lawful for the board of supervisors of the county in which such bridge was situate to purchase the right of such corporation, or the right of whomsoever the site of said bridge and the approaches thereto may belong, provided such purchase can be accomplished upon such terms as, in the judgment of the board of supervisors, shall be just to the public and to its best interests. But if in the judgment of the board of supervisors such purchase cannot be accomplished upon reasonable terms, then and in that case the said board of supervisors are authorized and it may acquire a valid title to premises on either side of the site upon which said bridge stood when so destroyed, provided the title to the same can be acquired upon reasonable terms as to price, and provide for the construction and maintenance of a bridge and the approaches thereto upon premises other than the site upon which the bridge so destroyed was located, provided the bridge to be constructed can be so located outside of the old site as not to increase the distance to be traveled to reach either end of such bridge more than five rods. The construction and maintenance of such bridge and the approaches thereto shall be at public expense and, when completed, shall be free for the use of the whole public, and all persons may use the same as a public or common highway, and the same shall be what is ordinarily understood to be a free bridge subject to the rights of the board of supervisors of the county in which said bridge is situate, and such board is hereby authorized to prescribe the weight that may, or may not, be carried over the same, and the rate of speed beyond which any animal shall not be rode or driven, under such penalties for disobedience of the rules or regulations prescribed by the board as said board may deem proper.

As amended by Laws of 1881, chap. 439. See Laws of 1883, chap. 346; 2 R. S. 941.

4. To apportion, as such board may deem equitable, the construction of any public bridge (except in the cases specified in the last preceding subdivision) over

a stream or other water forming the boundary line of counties between the towns at such point, and in all cases, except as herein provided, such counties shall each pay not less than one-sixth of the expense of such bridge, and to authorize any town, on the vote of a majority of the electors voting at any annual town meeting, or any regularly called special town meeting, to appropriate such a sum (to be raised as other bridge moneys are raised), or to pledge the credit of such town in the manner prescribed by law, to wholly construct and maintain, or aid in the construction and maintenance, of any bridge outside the boundaries of the town or county, or from or within the boundary line of any town into another town or county, but forming a continuation of highways leading from such town or county, and deemed necessary for the public convenience.

As amended by Laws of 1886, chap. 126. See Laws of 1883, chap. 346, *post*; 2 R. S. 942.

*Supervisors of Two Counties Authorized to Apportion Expense for Maintenance of Joint Bridge.*

5. To provide for the care, maintenance, preservation and reparation of any draw or other bridge (except on the Hudson river below Waterford, and on the East river, or over the waters forming the boundaries of this State), crossing a stream which forms at the point of crossing the dividing line of counties or of towns, and the maintenance, care and preservation of which bridge is by law a joint charge on such counties, or on such towns, or on the towns in which such bridge may be situated, and to severally apportion, as such board may deem equitable, the charge and expense for such maintenance, care, preservation and reparation, on the towns respectively liable therefor, or on the respective counties when liable; but when such bridge shall span any portion of the navigable tide-waters of this State forming at the point of crossing the boundary line between two counties, such expense shall be a joint and equal charge on the two counties in which the same is situated, and the board of supervisors in each of such counties is hereby authorized and directed to apportion such expense among the several towns and cities in their respective counties, or upon any or either of such towns and counties as in their judgment may seem proper; provided, however, that no town or city not immediately adjacent to such waters at the point spanned by such bridge shall be liable for any larger proportion of such expense than the taxable property of such town or city bears to the total amount of taxable property of such county. But no such bridge shall be constructed unless the same is authorized by a resolution adopted by a majority of the board of supervisors in each of such counties.

As amended by Laws of 1880, chap. 320. See Laws of 1883, chap. 346; 2 R. S. 943.

*To Authorize Towns to Borrow Money for Bridges.*

6. To authorize any town or towns liable, or to be made liable, to taxation for the erection, care, repair and maintenance, in whole or in part, of any bridge (except on the Hudson river below Waterford, and on the East river, or over the waters forming the boundaries of the State), to erect, repair and maintain the same, and to borrow such sums of money, in the manner provided in subdivision 29 of this section, as may be necessary for the purposes of such erection, repair and maintenance, and to pay any debt incurred in good faith by or in behalf of such town or towns for such purpose before or after the passage of this act. But no authority shall be exercised under this subdivision, except upon the application of a town liable to be taxed for such purpose, to be made by vote of a majority of the electors thereof voting at a regular town meeting or at a special town meeting called for the purpose, or upon the application of the supervisor, by and with the consent of the commissioner of highways, town clerk and justices of peace of such town. If any town, at a regular town meeting, held between the 1st day of February, 1875, and the passage of this act, shall have elected commissioners for the purpose of building a bridge, and providing money to pay for the same, by the issuing of bonds or otherwise, such bonds, not exceeding the amount authorized at such town meeting, are hereby authorized and declared valid; but said bonds shall not be sold or otherwise disposed of for less than par. And the board of supervisors shall levy a tax on such town for the

payment of such indebtedness at such times and in such amounts as may be necessary to meet the obligations incurred by said commissioners in pursuance of instructions given by such town at the time of electing said commissioners.

As amended by Laws of 1885, chap. 451; 2 R. S. 943.

*To Authorize Towns to Purchase Plankroads, Turnpikes, etc.*

7. To authorize any town or towns, when application shall be made therefor by a vote of the majority of the electors voting on the question at any annual or duly called special town meeting, to purchase, and any company owning the same to sell, the whole or any part of any plank, macadamized or turnpike road, or any toll bridge in such town or towns, or the franchises thereof, for free public use, and to determine the proportion of expense proper to be borne by each town, where there shall be more than one town applying for this purpose.

2 R. S. 944.

*Road Districts.*

8. To authorize the consolidation in any town of two or more of the established road districts therein, and the division of any established road district into two or more; and to constitute the territory of any incorporated village into a separate road district, and to provide for the election or appointment of overseers of highways in such districts, and prescribe the manner in which the highway labor assessed and highway taxes collected in such consolidated or separate districts shall be expended and accounted for, except that whenever an incorporated village shall constitute a separate and independent road district, the commissioners or superintendents of streets, or officers of said village, by whatsoever title or name called, whose duty it shall be to control, superintend and repair the streets therein, shall be the overseers of highways in said district.

As amended by Laws of 1876, chap. 258; 2 R. S. 944.

*To Authorize Grade of Streets, etc.—Assessment for, on Petition of Property-Owners, and Certificate of Town Officers—Notice to be Published—Town Officers not to Receive Compensation.*

9. To authorize, in any county containing an incorporated city of one hundred thousand inhabitants or upwards, when any territory within such county and beyond the limits of such city has been mapped out into streets and avenues, in pursuance of law, the establishment of a plan for the grades of such streets and avenues, the laying out, opening, grading, construction, closing and change of line of any one or more of them, to provide for the estimation and award of the damages to be sustained, and for the assessment on property intended to be benefited thereby, and fixing assessment district therefor; the levying, collection and payment of the amount of such damages, and of all other charges and expenses to be incurred, or which may be necessary in carrying out the provisions of this subdivision; but such last-named powers in regard to laying out, opening, grading, construction and change of line of such streets or avenues, or such provisions for defraying the expense thereof, shall only be exercised on the petition of the property-owners who own more than one-half of the frontage on any such street or avenue, or on the certificate of the supervisor, justices of the peace and commissioners of highways of the town, or two-thirds of such officers, that the same is, in their judgment, proper and necessary for the public interest; or in case the said streets or avenues, in respect to which such action is proposed to be taken, shall lie in two or more towns, on a like certificate of such town officers of each of said towns, or of two-thirds of all of them; provided, however, that before proceeding to make any such certificate the said officers, or such number of them as aforesaid, shall give ten days' notice, by publication in one of the daily papers of said county, and by posting in six public places in such town, or in each of such towns, of the time and place at which they will meet for the purpose of considering the same, at which meeting the public and all persons interested may appear and be heard in relation thereto; and provided that no such street or avenue shall be laid out, opened or constructed upon or across any lands heretofore acquired by the right of eminent domain, and held in fee for depot purposes by any railroad corpora-

tion, or upon or across any lands now held by any existing corporation formed for the purpose of improving the breed of horses, without the consent of such corporation; and provided further, that none of said town officers shall be entitled to charge any compensation for their services under this act, and no charge shall be made against the town or any of the property therein for the expense of the publication of the notice herein required. The provisions of this section shall not apply to the towns of Flatbush and New Lots in the county of Kings.

As amended by Laws of 1881, chap. 554; 2 R. S. 944.

#### *Width of Highways.*

10. To authorize the laying of highways of a greater or less width than is now required by law, and to alter by increasing or diminishing the width of highways now in existence.

As amended by Laws of 1876, chap. 257; 2 R. S. 945. See Laws of 1882, chap. 317. See, also, Decisions, *post*.

#### *Surveys and Records of Highways.*

11. To authorize and direct the highway commissioner or commissioners of any town to cause survey to be made at the cost of the town of any or all highways in such town, and to make a complete and systematic record thereof, or to revise, col- late and re-arrange existing records of highways, and to correct and verify the same by new surveys, and to establish the location of highways by suitable monuments whenever such commissioner or commissioners may deem expedient. Such records so made or revised, corrected and verified, shall be deposited with the town clerk of such town, and shall thereafter be the lawful records of the highways which they describe, but shall not affect rights pending in any judicial proceedings commenced prior to the deposit with the town clerk of such new or revised records.

2 R. S. 945.

#### *Non-Resident Highway Tax.*

12. Upon the application of the owners representing a majority in value (as shall be ascertained from the last annual town assessment-rolls) of the real estate lying along the line of any highway, laid out through unimproved lands, to appropriate the non-resident highway tax on the lands lying along said line, for the improvement of such highways under the direction of a commissioner or commissioners to be appointed by the board of supervisors. But this provision shall not apply nor interfere in any case where the same object is provided for by any special law passed prior to the 1st day of January, 1875.

Id.

#### *Extension of Time for Collection of Taxes.*

13. To authorize the county treasurer to extend the time for the collection of State, county and town taxes, in any town or ward, to a period not beyond the first day of April in any year. But no extension shall be permitted in any case until the collector or receiver of taxes of the town, city or ward in which such extension shall be asked, shall pay over to the county treasurer all the taxes collected by him, renew his bond to the supervisor, with such security as the said supervisor shall approve, and furnish evidence, by his oath and such other competent testimony as such treasurer shall require, that he has been unable, for cause stated, to collect all the taxes within the time required by his warrant.

Id. See Laws of 1885, chap. 82.

#### *Taxation of Dogs.*

14. To impose a tax on dogs within the several towns for the purpose of providing means thereby to pay damages done to sheep by dogs, and make proper provisions for the enforcement of the payment of such tax.

2 R. S. 945.

*Application of Penalties in Towns.*

15. To direct the payment, by justices of the peace, of all fines and penalties imposed by and paid to such justices in their respective towns, to the supervisors of such towns, on the first Monday in each month, to be applied by them toward the support of the poor of said towns, or to the superintendents of the poor, when the support of the poor is a county charge, and to direct the justices of the peace of such town to report the amount of all fines collected by such justices to the board of town auditors on Tuesday preceding the annual town meeting.

As amended by Laws of 1881, chap. 129, *sub nom.*, § 15; 2 R. S. 945.

*Preservation of Game and Fish.*

16. To provide for the protection and preservation, subject to the laws of this State, of game animals and birds, and of fish and shell-fish in all waters within the territorial jurisdiction of the county, and to prescribe and enforce the collection of penalties for the violation of any laws or regulations they may make pursuant to the provisions of this subdivision.

2 R. S. 945.

Chautauqua county has a special law on this subject.

*Employment of Offenders.*

17. To provide for the employment for hire, or in the work of the county, of persons who shall be convicted of drunkenness or misdemeanor or as disorderly persons, or vagrants, or of any crime less than a felony, and who may be sentenced to confinement at hard labor in the county jail; and to contract with the authorities of any other county for the reception into the penitentiary of such county, and the custody and employment at hard labor therein, of any person who may be convicted of any of the aforesaid offenses and sentenced to confinement at hard labor for a term exceeding sixty days.

See Laws of 1884, chap. 21; 2 R. S. 946.

*Jail Limits.*

18. To establish, on the recommendation of the county court, and to alter from time to time as such court shall recommend, the liberties of the county jail or jails for the purposes defined by statute.

2 R. S. 946; see 33 Hun. 320.

*Special Town Meetings.*

19. To provide for the calling and holding of special town meetings to consider and decide any question upon which the electors of the town may be called to take action in accordance with the provisions of this act.

Id.

*Town and Village Halls.*

20. To authorize any town, when application shall be made therefor by vote of a majority of the electors voting on the question at any annual or duly called special town meeting, and any village when similar application shall be made by a vote of a majority of its tax-paying electors voting on the question at a duly called special meeting, to purchase a site for a town or village hall, and to purchase or erect a building for such hall, and to raise money as may be necessary, from time to time, for the care, preservation and improvement of such hall.

Id.

*Village Fire Apparatus.*

21. Upon application, based on the vote of a majority of the tax-paying electors voting on the question at a special election duly called for the purpose to authorize any incorporated village, whose charter does not give sufficient power

to purchase apparatus for the extinguishment of fires, to provide, by lease or purchase, suitable places for the safe-keeping of such apparatus, and to borrow money on its corporate bonds, when necessary, to pay for the same, and for the purpose specified in subdivisions 20 and 23 of this section, and also to impose taxes for such purposes and to reimburse loans contracted therefor, with annual interest thereon, in the same manner as other taxes for general village purposes are imposed and collected.

Id.

#### *Cemeteries.*

22. To authorize the proper authorities of any incorporated cemetery association, or trustees owning or controlling cemetery lands outside of any incorporated city, to purchase or otherwise acquire additional lands for cemetery purposes, and to sell and convey lands owned by such association or trustees, and not needed for such purposes, and to appropriate the proceeds of such sale to the improvement, embellishment or preservation of such cemetery; including buildings, fences and other erections thereon, and the approaches thereto and to the payment of the purchase-money of real estate contained in such cemetery.

Id.

23. To authorize, on application in the case of a town, of the supervisor, town clerk and justices of the peace of such town, or of a majority of such officers, and in the case of a village, the board of trustees of such village, any town or village owning or having the legal supervision of a cemetery lot, to enlarge, newly-fence or otherwise improve the same, and in cases where, in their judgment, such removal shall be proper, to authorize the removal of interred bodies to proper cemetery grounds. But no such removal of bodies shall be made in any case, except after at least thirty days' personal notice, or where said notice cannot be given by reason of the non-residence of the party to be notified, a publication in the newspaper published nearest to the place of burial of such bodies, to the representatives of the persons whose bodies are proposed to be removed, if there be such representatives known, of the intention to remove such bodies. And such representatives shall be allowed not less than thirty days to remove such bodies. Provision shall also be made that the bodies so removed shall each, when distinguishable, be inclosed in a separate box or coffin, and that every monument, headstone, footstone, slab, board or other designation or distinguishing mark, shall be carefully removed and properly placed with the body with which it is connected, and properly set up at the time of the interment of such body, and members of the same family shall be placed in contiguous graves.

Id.

24. To authorize any town, village, society or association having the title to a cemetery lot from which the bodies may be removed, pursuant to the authority given by the last preceding subdivision, to sell and convey such abandoned cemetery lot; and to appropriate the proceeds of such sale to the payment of the expenses, when necessary, of such removal and re-burial, and to the purchase of new cemetery grounds and the payment of obligations incurred on account of purchases for such purpose, made before such removal of the bodies. When any lands shall be sold and conveyed, pursuant to this and the twenty-second subdivision of this section, they shall be no longer exempt from taxation as cemetery grounds.

Id. 947

#### *May Authorize Election of Tax Receiver, etc.*

25. To authorize any town which shall make application therefor, by the vote of an annual town meeting, to elect a tax receiver in place of a collector, to prescribe the mode of the collection of taxes, the security to be given, and the commission or other compensation to be allowed to such tax receiver for his services.

As amended by Laws of 1878, chap. 132; 2 R. S. 947.

#### *Town Meetings.*

26. Upon the application of any town duly made by the vote of any annual town meeting to authorize the annual town meetings in such town to be held by elec-

tion districts and to prescribe the manner in which the town business shall be conducted in such districts, and the results ascertained and recorded. Provided, however, that, whenever the electors of any town in which town meetings are held by election districts shall, by a vote of the majority of electors of such town, voting at an annual town meeting, declare in favor of a return to the former system of holding one poll at town meetings, it shall then be the duty of the board of supervisors, upon being furnished with an official copy of such action of said electors, to restore the former system of holding one poll only at town meetings therein, but such change shall not be made oftener than once in five years.

As amended by Laws of 1878, chap. 285; 2 R. S. 947.

*Appointment of Assessors, Highway Commissioners and Overseers of the Poor.*

27. To designate, upon the application of any town, duly made by the vote of its electors at an annual town meeting, the number of assessors of such town as their terms expire, not to exceed three; and the number of highway commissioners of such town not to exceed three; and the number of overseers of the poor of such town, not to exceed two; and when the number of assessors shall be reduced to one, to increase his compensation to an amount not exceeding \$3 *per diem*.

As amended by Laws of 1880, chap. 504; 2 R. S. 947.

*School Property.*

28. To authorize boards of trustees or of education in any union free school districts, or trustees of common school districts established in conformity to the general or to any special law of the State, on the application of a majority of the taxable inhabitants of the district voting on the question at a duly called meeting, to sell or exchange real estate belonging to the district for the purpose of improving or changing school-house sites, and to increase or diminish the number of members of said boards.

As amended by Laws of 1878, chap. 239, *sub nom.*, “§ 28 of chap. 482,” etc.; 2 R. S. 947.

*Towns Authorized to Borrow Money.*

29. To authorize any town to issue its bonds and borrow money thereon for a term not exceeding twenty years, for any purpose specified in subdivisions 6, 7, 20 and 23 of this section; but every act of such board of supervisors authorizing such loan shall provide for the imposition of taxes to pay the same in equal yearly installments, with the interest thereon, within the time specified in this subdivision.

2 R. S. 947.

*Tax to Pay Loans.*

30. To provide for the assessment, levy and collection, in the same manner as other town and county taxes are assessed, levied and collected, of any charge which may be incurred by any town or by the county at large under the provisions of this act.

Id.

Subdivisions 31. 32 and 33 repealed by Laws of 1885, chap. 270.

*Fire Districts.*

34. To establish a fire district in any unincorporated village in this State, and to authorize such district to procure a supply of water, and to purchase apparatus for the extinguishment of fires therein, upon the petition duly verified and signed by more than one-half of the taxable inhabitants of said district whose names appear upon the last preceding assessment-roll of the town in which such district is located, as owning or representing more than one-half of the taxable property of the proposed district; and to provide for the assessment, levy and collection of the cost thereof upon such district, in the same manner, at the same time, and by the

same officers as the taxes of the town in which such village is located are assessed, levied and collected.

Added by Laws of 1885, chap. 439; 2 R. S. 948.  
Subd. 35 repealed by Laws of 1885, chap. 270.

#### *Division of School Commissioner Districts.*

36. To divide any school commissioner district which contains more than two hundred school districts, and to erect therefrom an additional school commissioner district, and when such district shall have been formed, a school commissioner for said district shall be elected in the way and manner now provided by law for the election of school commissioner.

Added by Laws of 1881, chap. 543; 2 R. S. 949.

#### *To Fix Time of Opening and Closing County Offices.*

37. To fix and regulate the time for opening and closing the offices of all county officers who are required by law to have an office and to keep open the same during the secular days of the week, except Sundays and days known and designated by law as holidays.

Added by Laws of 1882, chap. 118.

#### *Powers, when to be Exercised — Vote Requisite to Pass Resolutions — Form and Contents of Resolutions — To be Published — Copies of Resolutions to be Filed — Evidence — Compensation for Publishing.*

§ 2. The powers hereby conferred (except as stated in section 7) shall be exercised by boards of supervisors at stated sessions to be fixed by them, or at special sessions to be called by a majority of their number, or to be held by adjournment from a previous session. Every resolution proposing a change in the location of a county court-house, jail or clerk's office, and every resolution proposing action under any previous law wherein the assent of two-thirds of all the members of the board is required, shall require for its passage the assent of two-thirds of all the supervisors elected to the board, and every other resolution adopted in pursuance of this act shall require for its passage the assent of a majority of all the supervisors elected to the board, to be ascertained by taking the yeas and nays, which shall be recorded in its journal of proceedings. And every resolution adopted in pursuance of the provisions of the first section of this act, and of any previous act conferring legislative powers on boards of supervisors shall be prefixed by a title concisely expressing its contents, following which shall be a reference to the law or laws from which the authority to pass the resolution shall be derived, and a statement of the vote, whether by two-thirds or a majority of all, by which it was passed, and in the cases where it is required that the resolution should receive the assent of the supervisor of the town to which it applies, the fact whether or not it received such assent shall be also stated, and all resolutions so adopted shall be numbered in the order of their passage and certified by the chairman and clerk, and, within six weeks after the close of each session, published in the newspapers in the county appointed to publish the session laws of the legislature. And an official copy of all such resolutions, duly attested by the signatures of the chairman and clerk, and by the official seal of the board, shall be filed in the office of the county clerk within one week after the close of any session, and an exemplified copy of any such resolution under the hand and seal of such county clerk, shall be presumptive evidence of the passage of such resolution, in all the courts of this State. The compensation to be paid for publishing such resolutions shall be fixed by the board of supervisors and paid for as a county charge.

2 R. S. 949.

#### *Resolution Authorizing Issue of Bonds.*

§ 3. In every resolution of a board of supervisors authorizing the issue of bonds or other obligations, there shall be contained a provision requiring adequate security in addition to the security now required by law, to be given by the officer or by the board of officers authorized to issue them, for the faithful performance



of his or their duty in the issue of such bonds, and the lawful application of the funds arising therefrom, and the full accounting therefor, and of the funds which may be raised by tax for the payment thereof, which may come into his or their hands annually, to the board of supervisors.

Id.

§ 4. In every resolution of such board authorizing the issue of any bond or other obligation of debt, the form of the obligation to be issued, the time and place of payment thereof, and the rate of interest to be paid thereon, not exceeding seven per cent per annum, shall be specified, and no bond or other obligation shall be sold by the county, or by any city, town or village, for less than the par value thereof.

Id.

§ 5 probably repealed by Laws of 1885, chap. 160, which see.

Id. 950.

*When Statute Law Conflicts.*

§ 6. Whenever, in the exercise, by a board of supervisors, of any of the powers conferred by this act, any enactment shall be made which shall be in conflict with any existing statute law of this State, such law, or so much thereof as shall so conflict, shall, for the purposes of this act, be inoperative in the case or cases provided for by such enactment.

Id.

*To Determine Contested Membership—To Make Rules, etc.—To Determine Newspapers for Publishing Election Notices, etc.—Compensation.*

§ 7. County boards of supervisors shall also have authority, by resolution, to be duly entered in their minutes of proceedings, and to be published therewith:

1. To determine, unless the same shall have been determined by a court having jurisdiction thereof, upon the returns of the proper certifying officers, and upon such other testimony furnished to them as would be competent in a court of law, all cases of contested membership in their respective boards; and when so determined in any case, the decision shall be conclusive as to the right of the parties to the contest.

2. To make rules for the conduct of their proceedings, to compel the attendance of absent members at meetings of their respective boards, and for the maintenance of order and decorum at such meetings, and to enforce pecuniary penalties, not exceeding fifty dollars for each offense, for the violation of such rules.

3. To determine, after the fifteenth day of November, eighteen hundred and seventy-five, except in the county of Kings, in what newspapers, not to exceed two, the election notices issued by the secretary of State, and the official canvass shall be published, and to fix the compensation for such publication. But in cases where such publication shall be ordered to be made in two newspapers such papers shall be of opposite political character.

Id.

§ 8. For the services of supervisors, except in the counties of New York, Albany, Rensselaer, Kings, Oneida, Erie and Broome, at the sessions of their respective boards, each supervisor shall receive from the county compensation at the rate of three dollars per day for each day's actual attendance thereat, including the whole day of twenty-four hours; each supervisor shall also receive from the county for his services in making a copy of the assessment-roll of his town or ward, including the extension of the tax list, to be delivered to the collector or receiver of taxes, compensation at the rate of three cents for each written line for the first one hundred written lines on said roll and list, and two cents per line as aforesaid for the second hundred written lines, and one cent per line as aforesaid for all written lines in excess of three hundred; he shall also receive mileage at the rate of eight cents per mile for once going and returning from his residence to the place where the sessions of the board shall be held by the most usual route, for each regular or special session provided for by this act. No other compensation, fee, charge or allowance of any kind shall be made to any supervisor for his services, except such

as shall be by law a town charge, and any supervisor who shall receive or vote for any allowance in violation of the provisions of this section shall be deemed guilty of a misdemeanor and shall, on conviction, pay for the use of the county, such penalty as the court having cognizance of such offense shall judge, not exceeding two hundred and fifty dollars. But nothing in this section shall forbid the payment to any supervisor of his actual expenses incurred in any investigation or other duty which may be lawfully committed to him by the board, and which shall require his attendance at any place away from where he shall reside, and five miles or more distant from the place where the board shall hold its sessions, and all provisions of law inconsistent with this section are hereby repealed.

As amended by Laws of 1886, chap. 63.

In various counties the supervisors have an annual salary.

## § 574.

### LAWS OF 1879, CHAP. 275.

AN ACT to authorize boards of supervisors to appoint a commissioner or commissioners to receive and expend any moneys heretofore set apart or appropriated by any act or acts of the legislature of this State for highway or bridge purposes, and not yet expended, and to legalize any such appointment heretofore made.

#### *Commissioners to Expend State Appropriations for Highways.*

SECTION 1. In any case where by any act or acts of the legislature of this State, any non-resident highway taxes have been specially set apart or appropriated for the construction or maintenance of any roads or bridges, and any commissioner or commissioners appointed therefor, and where by reason of the expiration of the official life of the commissioner or commissioners so appointed to receive, expend, and account for said non-resident highway taxes, any balance or remainder so set apart or appropriated has not been so received or expended, it shall be lawful for the board of supervisors of the counties wherein said non-resident lands are situated to appoint a commissioner or commissioners to receive and expend any such unexpended balance, under the same regulations and conditions for the faithful performance of his or their duties as were provided for in said original act or acts; and any act or acts of any board of supervisors appointing such commissioner or commissioners in anticipation of the passage of this act are hereby ratified and confirmed.

2 R. S. 951.

## § 575.

### LAWS OF 1880, CHAP. 175.

AN ACT conferring additional powers upon boards of supervisors for the laying out highways through unoccupied and unimproved tracts of land.

*What Boards may Establish Highways — May Include Parts of One or More Towns — Supervisors May Appoint Commissioners, Levy Taxes, and Authorize the Borrowing of Money — Limit.*

SECTION 1. The board of supervisors of any county in this State containing more than three hundred thousand acres of unoccupied and unimproved forest lands, in addition to the powers now possessed by said board, is hereby authorized to establish separate highway districts in such county, for the purpose of laying out and constructing highways through such unimproved and unoccupied tracts of land in such county; such highway districts to be established upon the application of the owners of more than one-half of the non-resident lands to be included therein. Any highway district established under the provisions of this act shall consist of contiguous tracts or parcels of land and may include within

its limits parts of one or more towns, and the same may be changed, altered or abolished at any time by said board of supervisors. The said board of supervisors shall have power to appoint a commissioner or commissioners to lay out and construct highways in any such district and to prescribe their powers and duties, and may also direct the manner in which highway taxes shall be assessed, levied and collected upon the lands embraced in any such district, and likewise the manner of expenditure thereof. The said board of supervisors may also authorize commissioners appointed under this act to borrow money on such terms as said board shall direct, but not exceeding the estimated amount of ten years' highway taxes upon the lands embraced within the district in which such loan is authorized, and may, for the purpose of repaying any such loan, set apart and appropriate the highway taxes upon lands in any such district for a period not exceeding ten years from the time of making such loan.

Id. 952.

## § 576.

### LAWS OF 1882, CHAP. 317.

AN ACT conferring additional powers on boards of supervisors.

#### *May Authorize State Road to be Altered, etc.*

SECTION 1. The board of supervisors of any county may authorize and empower the highway commissioners of any town to alter, discontinue, widen or narrow, any road or public highway which shall have been laid out by the State within its boundaries, under the same conditions as would govern their actions in relation to public highways that have been laid out by legal authorities.

§ 2. This act shall take effect immediately.

## § 577.

### LAWS OF 1883, CHAP. 346.

AN ACT to provide for the construction, care, maintenance, preservation and repair of public bridges over streams or other waters forming the boundary lines of counties, and to apportion the expense thereof.

SECTION 1. Each of the counties of this State shall be liable to pay for the construction, care, maintenance, preservation and repair of public bridges, lawfully constructed over streams or other waters forming its boundary line, not less than one-sixth part of the expense of such construction, care, maintenance, preservation and repair.

§ 2. It shall be the duty of the commissioners of highways of every town in which a part of any such public bridge may be, to make and deliver to the supervisor of said town, on or before the first day of November in each year, a statement, in writing, containing a description of said bridge, the whole expense in items incurred by said town during the year preceding for such construction, care, maintenance, preservation and repair, the truth of which statement shall be verified by the oath of one of said commissioners.

§ 3. It shall be the duty of the supervisor to whom such statement is delivered to present the same to the board of supervisors of the county in which such town is located, at its next annual session thereafter; and it shall be the duty of the said board of supervisors to levy upon the taxable property of said county a sum sufficient to pay such county's proportion of such expense, and the same, when collected, shall be paid to the commissioners of highways of said town, to be applied by them toward the payment of such expense.

§ 4. Should the board of supervisors of any county to which such statement is presented consider it equitable and just that such county should bear a larger proportion than one-sixth part of such expense, it may, in its discretion, levy a larger amount on such county for such purpose, to be applied in the manner aforesaid, not to exceed, however, one-fourth part of such expense; but the whole

amount so levied for such purpose in any county in any year shall not be to exceed the sum of five thousand dollars, nor shall the provisions of this act apply to any such expense heretofore contracted.

§ 5. The intent and purpose of this act is to provide that the towns in which any free public bridge over streams or other waters forming the boundary line of counties may be located shall each pay not more than one-third part of such expense, and that the counties in which such bridge may be located shall each pay not less than one-sixth part thereof.

§ 6. The provisions of this act shall not apply to bridges between the county of Westchester and the county of New York.

§ 7. All acts and parts of acts, so far as the same may be inconsistent with the provisions of this act, are hereby repealed, but nothing herein contained shall preclude any town from obtaining relief from counties for any such expense already incurred under the provisions of law heretofore existing.

§ 8. This act shall take effect immediately.

See Laws 1875, chap. 482, § 1, subd. 4.

## § 578.

### LAWS OF 1885, CHAP. 160.

#### AN ACT to provide for changing the site of county buildings.

SECTION 1. Twelve or more resident freeholders of any county may petition the board of supervisors of such county for the change of site of any county building or buildings. The petition shall describe the building or buildings the site of which is sought to be changed, and the proposed site therefor. Such petition, with a notice signed by the petitioners, to the effect that the petition will be presented to the board of supervisors of such county at the next annual meeting, shall be printed at least once in each week for six successive weeks immediately preceding such annual meeting, in two newspapers of said county.

§ 2. If such petition and notice be presented to such board, with due proof of their publication, such board may, in its discretion, entertain such petition; and if two-thirds of all the members elected to such board vote in favor of a resolution for the removal of the site of the building or buildings described in such petition to the site therein described, such resolution may be considered by the next board of supervisors at their annual meeting; and if two-thirds of all the members elected to such board shall also vote in favor of the resolution for such removal, such last-named board shall direct that such resolution, together with a notice that the question of such removal will be submitted to the electors at the ensuing general election, be published in at least two newspapers, published in said county, to be designated by such board, once in each week for six consecutive weeks immediately preceding such general election. Such resolution and notice shall be published accordingly.

§ 3. The question of the removal of the site of such building or buildings shall thereupon be voted upon by the electors at such general election. The ballots in favor of such removal shall be in this form: "In favor of the removal of the site of the " (giving the name of the building or buildings). The ballots against such removal shall be in this form: "Against the removal of the site of the " (giving the name of the building or buildings). If two-thirds of all the ballots cast shall be in favor of the removal of the site of such building or buildings, the proceedings of such board of supervisors shall be deemed ratified by the electors, and the change of the site of such building or buildings shall be made subject to the provisions of the next section.

§ 4. Notwithstanding any vote by a board of supervisors and the electors to change the site of any building or buildings, as herein provided, the old site and building thereon shall be continued and used until a new building or buildings upon the new site have been provided and accepted by the board of supervisors.

§ 5. In any case where a special law shall have been passed, prior to the passage of this act, providing for the purchase or sale of any site, or the location, erection, purchase or sale of any county building, or for the care and management thereof, no action shall be had by any board of supervisors which shall interfere with the full execution of such special law.

§ 6. The counties of New York and Kings are hereby exempted from the provisions of this act.

§ 7. All acts and parts of acts providing for the removal of the site of any county building or buildings are hereby repealed.

§ 8. This act shall take effect immediately.

## § 579.

### LAWS OF 1886, CHAP. 173.

AN ACT to empower the boards of supervisors of the several counties of the State of New York to vote moneys for the erection, repairing or remodeling of monuments to the veterans of the late war of the rebellion.

SECTION 1. The boards of supervisors of the several counties of the State of New York are hereby authorized and empowered, by a vote of two-thirds of all the members of such boards respectively, to raise and appropriate such moneys as such board deem necessary for the erection, within their respective counties of public monuments in commemoration of the veterans of the late war of the rebellion, and for repairing and remodeling such monuments.

§ 2. This act shall take effect immediately.

## § 579A.

### LAWS OF 1886, CHAP. 316.

AN ACT in relation to the bonded indebtedness of villages, cities, towns and counties in this State, and to provide means for the payment and refunding thereof.

SECTION 1. The present bonded indebtedness of any village, city, town or county in this State, including interest past due or unpaid, may be paid up or retired by the issue of new bonds for like amounts by the board of trustees, mayor or common council, town board, board of supervisors or supervisor, or railroad commissioners or officer, or officers now having in charge according to law the payment of interest or principal on bonds herein proposed to be paid or retired respectively of such village, city, town or county; provided, however, that such new bonds shall be issued only when existing bonds can be retired by the substitution therefor of such new bonds, or can be paid up by money realized on the sale of such new bonds, but where the said bonded indebtedness shall become due within two years from the issue of the said new bonds, then such new bonds may be issued or sold to provide money in advance, with which to pay up such existing bonds, when they shall become due and payable; and provide further, that such new bonds shall bear interest at a rate not exceeding four per centum per annum, payable semi-annually or quarterly. All existing bonds taken up by the substitution of such new bonds, or paid under the provisions of this act, and all new bonds and coupons, when paid up as herein provided, shall be immediately canceled as now provided by law, and a certificate executed by the officers issuing such new bonds shall be forthwith made and filed by them in the county clerk's office of the proper county, which shall state the amount of existing bonds so canceled and of new bonds so issued. This act shall not be so construed as to authorize the issue of new bonds to supersede or pay existing bonds which have been adjudged invalid by the final judgment of a competent court. The new bonds so to be issued shall be made payable at any period or periods deemed advisable by the officers issuing the same, not less than one year nor more than forty years from their date; and shall bear date and draw interest from the date of the payment of existing bonds, or the receipt of the money to pay existing bonds; and an amount not less than two per cent of the whole amount of said bonds so issued shall be made payable and shall be paid and retired, each and every year after the issue thereof, and said bonds shall be issued in no case at less than for their par value.

§ 2. The bonds issued under the provisions of this act when submitted\* or sold to retire existing bonds, by any authorized officers of any town, village, city or county, or their successors in office, shall be valid and binding on the town, village, city or county wherein they are issued, such bonds shall contain a recital that they are issued under the provisions of this act, and such recital shall be conclusive evidence in any court of the validity of said bonds and the regularity of their issue.

§ 3. All new bonds issued by any village, city, town or county in this State, under the provisions of this act, shall be exempt from taxation for town, county, municipal or State purposes, until the period when they are made payable.

§ 4. It shall be the duty of the railroad commissioners, supervisors and financial officers of towns, villages, cities and counties, having in charge the money received and collected, and responsible for the payment of the interest and principal due on bonds issued under this act, and they are hereby required to report annually to the board of supervisors of counties, the trustees of villages, and the mayor and board of aldermen or common council of cities, as the case may be, as now required by law, the sum due and payable the succeeding year, both principal and interest, on said bonds.

§ 5. It shall be the duty of the board of supervisors of counties, the trustees of villages, and the board of aldermen and the common council of cities, and they are hereby required to levy and collect in each year upon the towns, villages, cities or counties severally obligated, moneys sufficient to pay such interest when and as it shall fall due, and the principal of such bonds when and as the same shall become due and payable.

§ 6. Before the said commissioners, or either of them, shall enter upon the discharge of their duties under this act, they shall jointly and severally with two or more sureties execute to the supervisor of said town or city a bond in the penal sum equal to one-fourth the amount to be issued by said town or city under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act, and existing laws, and for the just and honest application by them of all moneys, or bonds issued by them or coming into their hands as such commissioners. The sufficiency of said sureties shall be determined by the supervisor of said town or city, or the county judge of the county wherein said town is situated, or any justice of the supreme court, and shall be indorsed on said bonds. The said bond shall immediately thereafter be deposited with the supervisor or supervisors of said town or city, to be collected by him or his successors in office for the use and benefit of said town or city, in case the said commissioners, or either of them, are guilty of such a breach of duty or malfeasance in office as to render said bonds collectible; and it is further provided, that any willful misappropriation or embezzlement or wrongful conversion of any said town bonds, or the moneys arising from the same, or the moneys to be raised by a sale thereof, as provided by this act, or of moneys to be raised by tax as aforesaid, to an amount exceeding \$1,000, shall be a felony punishable by imprisonment in the State prison for a term not exceeding ten years.

§ 7. This act shall take effect immediately.

## § 580.

### LAWS OF 1886, CHAP. 355.

#### AN ACT increasing the legislative powers of boards of supervisors.

SECTION 1. The boards of supervisors of the several counties of this State are hereby authorized to make such regulations and requirements concerning the keeping of poor accounts, and disbursements by overseers of the poor, and their report to town auditors, and also concerning the keeping of poor accounts and disbursements and the manner of auditing bills presented to them and their report to the board of supervisors by county superintendents of the poor, as the efficiency of the service and the protection of the interests of the public may require, all such rules, regulations and amendments thereto to be adopted by such boards of supervisors at a regular session of the board.

§ 2. This act shall not apply to the county of Richmond.

§ 3. This act shall take effect immediately.

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\* So in the original.

§ 581.

LAWS OF 1886, CHAP. 644.

AN ACT to enable any county, city or town in the State of New York to lease its public buildings, or a part thereof, to posts of the Grand Army of the Republic.

SECTION 1. Any county, city or town in the State of New York is authorized to lease, for a period not exceeding five years, to any post of the Grand Army of the Republic established in such county, city or town, to be used by such post, any public building, or any part thereof, belonging to such county, city or town, except school-houses in actual use as such, at a nominal rent to be fixed by the board of supervisors of such county, or the board of aldermen of such city, or the board of trustees of such town.

§ 2. This act shall take effect immediately.

DIGEST OF DECISIONS

Under the above acts giving the more important cases not mentioned elsewhere in this book.

§ 582. Under Revised Statutes.

AS TO TOWN CHARGES—BOARD MAY AUDIT.

The claim was unliquidated. If the town auditors have not, the board of supervisors of the county have, ample power, and it is their duty to audit the accounts of town officers against their respective towns, and direct the raising of such sums as may be necessary to defray the same.

If in a proper case, the town auditors or board of supervisors neglect or refuse to audit and allow a just and legal claim of a town officer, the party has an ample remedy by *mandamus*.

Presbyterian Society of Knoxboro v. Beach, 8 Hun, 644.

ILLEGAL AUDITS.

A board of supervisors has no power to audit and allow accounts not legally chargeable to their county, and such an audit is null and void; it may be disregarded by the officers of the county, and is not binding and conclusive upon a succeeding board.

The payment of such an account so audited is not a voluntary payment by the county; but an unauthorized act of its agents, and an action lies at the suit of the county to recover back the moneys paid.

Board of Supervisors v. Ellis, 59 N. Y. 620.

The provisions of the Revised Statutes declaring that a majority of the supervisors of a county shall constitute a quorum for the transaction of business, and that all questions arising shall be determined by a majority of the supervisors present, cannot be altered by a rule of the board.

People, *ex rel.* Burroughs *et al.*, v. Brinkerhoff, 68 N. Y. 256.

The provision of the Revised Statutes authorizing a tax collector to levy an unpaid tax "by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods or chattels in his possession," refers to actual, physical, and not merely legal or constructive possession, and an actual possession by the consent of the owner, although unaccompanied by any ownership in the possessor, is a possession within the meaning of the statute.

Hersee *et al.* v. Porter, 100 N. Y. 403.

### § 583. Under Laws of 1838, Chap. 314.

#### BRIDGES.

Where the board caused a portion of the money expended under its supervision in repairing a *public bridge*, which crossed a stream dividing two towns, to be levied upon the county, and the residue upon the two towns, *held*, that the tax was legally imposed.

Hill v. Supervisors, 12 N. Y. 52.

If the bridge is a *county bridge*, the county *must* pay for repairs.

People, *ex rel.* Com'rs, v. Supervisors, 1 Hill, 50.

The *notice* required by the third section applies to all persons applying for the imposition of a tax, but does not, *it seems*, restrain the board from acting on its own motion in raising money for necessary repairs of a *county bridge*.

Id.

### § 584. Under Laws of 1849, Chap. 194.

The question whether a town has been legally erected may be tested in an action in the nature of *quo warranto*, against one claiming to exercise the office of supervisor of such town.

People v. Carpenter, 24 N. Y. 86.

The act of the board dividing a town and forming a new one from a portion thereof only described the dividing line; *held*, that the uncertainty was cured by the reference in such act to the petition, etc., upon which it was founded, and from which it appeared that the new town was to lie south of the line of division, and by proof *abunde* that the place named in the act for holding the first town meeting was south of such line.

Id.

The act authorizing the board to make laws for the protection of shell and other fish is constitutional. It was not necessary to limit the penalties, but the board should provide for the violation of the laws they should enact.

Smith v. Levinus, 8 N. Y. 472.

The act of the supervisors in altering town lines or erecting new towns is one of a legislative character, in favor of the regularity of which all presumptions are to be indulged. Those who would impeach it have the burden of disproving a compliance with the conditions imposed by the statute.

People v. Carpenter, 24 N. Y. 86.

A notice of intention to apply to a board of supervisors to fix, establish, locate and define a disputed boundary line between two towns, which omits to describe *particularly* the line in dispute, is defective, although the line proposed to be acted upon is fully stated, and such a notice confers no jurisdiction on the board. Said board acts judicially in such case.

Prohibition lies to restrain proceedings of the board of supervisors, judicial in their nature, under a notice which confers no jurisdiction.

The People, *ex rel.* Town of Knox, v. Supervisors of Albany Co., 63 How. 411.

### § 585. Under Laws of 1868, Chap. 442.

Railroad commissioners appointed in Livingston county under Laws of 1868, chapter 442, had no relation to the county and were in no respect subject to the supervision and subordinate to its supervisors; the latter, therefore, had no jurisdiction to appoint a committee to ascertain who were commissioners of a town, and such committee, if appointed, had no power to issue a subpoena to witnesses.

Matter of Bradner, 87 N. Y. 171.



On November 18, 1879, the board of supervisors of Livingston county adopted a resolution appointing a committee to inquire who were railroad commissioners for the town of E., if any, with authority to send for persons and papers and take such proof of the subject-matter as to them might seem expedient, and if it appeared that any person or persons were reputed to be in occupation of such office, to notify him or them to appear before the committee, and inquire when and by whom, and for what term of office such reputed commissioners had been appointed. The relator, the supervisor of said town, who was appointed chairman of said committee, made an affidavit setting forth facts tending to show that no railroad commissioner had been lawfully appointed for said town; that a tax had been imposed upon it and collected, the proceeds of which it was his duty as supervisor to pay to such commissioners, to be applied upon the principal and interest of certain bonds issued by the town; that certain persons claiming, or reputed, to act as such commissioners had been duly notified and summoned to appear before said committee and produce certain documents, and that they had neglected and refused so to do. *Held*, that as the proposed inquiry was not instituted to enable the board of supervisors instituting it to discharge any duty imposed upon it by law, or to enable it to look after the affairs of the county, or protect its interests, and the commissioners were not officers of the county, neither the board nor the committee had jurisdiction of the subject-matter of the proposed inquiry, and that an attachment issued by a justice of the supreme court to compel the attendance of witnesses who refused to appear before such committee and be examined, was unauthorized.

Faulkner v. Morey, 22 Hun, 379.

## § 586. Under Laws of 1869, Chap. 855.

### *Books, Records, etc.*

The records of conveyances in the county clerk's office are not corporate property of the county. The county clerk in keeping such records does not act as the agent of the county.

The board of supervisors have no power in hostility to the clerk, to have indexes made of the records in the clerk's office.

People, *ex rel.* Welch, v. Nash, 3 Hun, 535.

Nor have they power to change the method of indexing deeds or mortgages, prescribed by statute, or to transfer the duty or power of making the indices from the county clerk to another person, or to interfere with the custody of the records vested by law in the county clerk, by authorizing another to use the records for the purpose of making indices.

*Id.* 62 N. Y. 484. See, also, 21 Dig. 366.

Where the board of supervisors, by resolution, authorized plaintiff, their county clerk, to re-index the record of mortgages, etc., *held*, that an application for a *mandamus* to compel the plaintiff's successor in office to allow plaintiff the use of the records for that purpose, was properly denied; that when plaintiff ceased to be county clerk, the duty of making indices, if necessary, devolved upon his successor.

*Id.*

### *Under Section 1.*

Under section one of the act extending the power of boards of supervisors, which confers power on said boards, with the consent of certain town officers, to authorize the borrowing of money on the credit of a town for the building and repair of roads and bridges, it is not essential that the town officers named should meet for the purpose of determining the amount to be borrowed, on the first Monday of September; the provision of said section requiring a meeting on that day in each year is directory merely, and it is sufficient, if a meeting is held prior to the first Monday of October.

The provision of said section authorizing the board of supervisors to prescribe the form of obligation to be issued for the loan, includes the naming of the town officer who is to execute the obligation, and they may impose this duty upon the supervisor of the town.

Where the specified officers of a town have met within the time limited by the section and have determined the amount to be borrowed, and the board of supervisors have conferred the requisite authority to issue bonds of the town for the amount, no subsequent meeting of said officers is necessary for the purpose of authorizing or consenting to such issue.

Where a supervisor of a town is required by the board to execute the bonds, it is no excuse for a refusal, that the certificate of consent required by said section to be indorsed by the town clerk upon the bonds is not in due form; a proper certificate can be added as well after as before the execution, and it is the duty of the supervisor to see that any error is rectified.

Section 2 of said act provides for a different and distinct class of cases from those provided for in section 1; and a supervisor of a town required to issue bonds, under and in pursuance of section 1, is not justified in refusing so to do because two-thirds of the members of the board or supervisors did not assent to the resolution authorizing the loan and directing such issue, or because it did not receive his affirmative vote, as required in cases included in section 2.

People, *ex rel.* Atkinson *et al.* v. Tompkins, 64 N. Y. 53.

#### *Under Section 2.*

A resolution, presented to the board of supervisors of Queens county, authorizing the town of N. to borrow money to purchase, for public use, a plank-road in the town, received the vote of a majority of the members present; the chairman declared it lost, because it failed to receive a two-thirds vote, and the clerk recorded the ruling. *Held*, that a *mandamus* was properly granted, directed to the chairman and clerk, requiring them to convene the board, and requiring the chairman to declare the resolution carried, and the clerk to so record it, etc.; that, while the writ might have been directed to the board, it was not error that it was not so directed; also *held*, that as the clerk in making the entry simply acted in the performance of his duty to record correctly what took place, the allowance of costs against him was error.

People, *ex rel.* Burroughs *et al.*, v. Brinckerhoff, 63 N. Y. 260.

The supervisors of a county, in executing the power conferred by the laws of 1869,

Laws of 1869, chap. 855, § 2.

to provide for the erection of bridges, etc., may appoint commissioners to carry out the work.

Their erection of a bridge is not rendered illegal, by the fact that when determined on, there was no highway leading to its site.

People v. Meach, 14 Abb. N. S. 429.

#### *Under Section 5.*

#### *Manifest Error.*

See *ante*, § 343.

Laws of 1871, chapter 695, amending chapter 855, section 5 of Laws of 1869 authorizing the refunding to a person of "the amount collected from him of any tax illegally or improperly assessed or levied," was intended to relieve persons, by reimbursement thereof, from taxes which were not *legally* chargeable to them, or on their property, *i. e.*, from taxes which they should not be required *in any manner* to pay. The act refers to the tax itself, rather than to the *method* of making the assessment or levy, to an *illegal* rather than to the *erroneous assessment* or levy of a *legal* tax.

Harris v. Supervisors of Niagara Co., 33 Hun, 279.

#### *Illegal Tax.*

Where the tax is clearly *illegal* and has been collected, the board should refund the amount paid.

*In re* N. Y. Catholic Protectory, 77 N. Y. 342; Williams v. Supervisors, 78 id. 561; Boss v. Supervisors, 88 Hun, 20.

The county court has nothing to do with these cases under the present law.

It seems that even a *clerical* error, if it affects the *substantial* rights of a party, will not be corrected by the courts without notice to him, and that for such full and regular period as the law prescribes.

People, *ex rel.* v. Forrest *et al.*, 96 N. Y. 554.

If the *courts* will not act in such cases boards of supervisors may wisely follow their example.

## § 587. Under Laws of 1875, Chap. 482.

*Legislation* by the supervisors under this act may be in the form of a resolution reported by a committee and adopted by a vote of the board in passing on the report.

People, *ex rel.* Masterson, v. Gallup, 12 Abb. N. C. 64.

If the board has no seal, the lack of a seal which the statute directs to be affixed to the certificate to the resolution does not impair its validity.

*Id.*

This case was reversed on another point.

### *Under Section 1, Subdivision 1.*

Under the power "to purchase, or otherwise acquire for the use of the county, real estate for sites \* \* \* for jails and such other places of confinement as may be authorized or required by law," and "to erect, alter, improve, purchase and receive by gift buildings for any of such purposes," conferred upon boards of supervisors by Laws of 1875, chapter 482, section 1, it is not necessary that the board should purchase a site and then erect a building thereon; if the county owns real estate, with an appropriate building thereon, it may, under the said act, appropriate a part of such building to be used as a jail.

It is not necessary that the jail should be acquired and established in such a building by an express enactment of the board; it is sufficient if the part of the building used for that purpose be recognized as a jail by the acts and resolutions of the board.

Roach v. O'Dell, 33 Hun, 320.

### *Under Subdivision 2.*

Laws of 1875, chapter 482, subdivision 2, passed in pursuance of section 23 of article 3 of the Constitution, authorizing the legislature to confer further powers of local legislation upon boards of supervisors, did not authorize the board of supervisors of Cattaraugus county to alter the salary of the surrogate of that county, as established by Laws of 1872, chapter 767, as amended by Laws of 1877, chapter 401.

Spring v. Wait, 22 Hun, 441.

Laws of 1875, chapter 482, conferring further powers of local legislation and administration upon the boards of supervisors, authorized them "to fix, subject to the limitations of section 15, article 6 of the Constitution, the salaries and *per diem* allowances of county officers, whose compensation may be a county charge, and which shall not be changed during the term of office of such officers respectively, and to prescribe the mode of appointment and fix the number, grade and pay of the deputies, clerks and subordinate employees in such offices."

Claiming to act under the authority of this law, the board of supervisors of Albany county passed a resolution providing that thereafter there should be one clerk only to the coroners of Albany county. It prescribed the mode of his appointment and the duration of his office, and then directed that "the office of the coroners shall be located in the rooms of the board of supervisors and the duty of the clerk shall be to attend at such office during each week-day, and to aid the coroners in the discharge of their duties, and to receive, preserve and

file each inquisition and to keep a record of the same." Prior to that time the coroner of Albany county had not had an office nor a clerk. *Held*, that the act did not authorize the supervisors to provide for the appointment of deputies, clerks and subordinate employees to every county officer.

That the act only authorized the board of supervisors to prescribe the mode of appointment and fix the number, grade and pay of persons, such as deputies, clerks and messengers, who might be needed by such of the county officers as are required to keep *public offices*, such as the county clerk and the county treasurer.

That the assignment of a room for the use of a county official did not make it a "county office" within the meaning of this section.

That the resolution in fact created a new office, charged with some of the duties of the coroner and with some of the duties of the county clerk.

That it was unauthorized and void.

*People, ex rel. Masterson, v. Gallup*, 30 Hun, 501; affirmed, 96 N. Y. 628.

August 7, 1877, the board of supervisors of the county of Kings passed a resolution fixing the salary of the chief clerk in the district attorney's office, at \$3,000 a year; on November 8th of that year the board adopted a resolution to raise for the current fiscal year a certain sum for salaries of the district attorney, his clerks, etc., which sum of money was insufficient to pay these officers the salaries fixed by the prior resolution. The district attorney, who had just been elected, made a list of his clerks, and of the salary each was to receive, including his own, the sum of which just equaled the amount raised by the board. He appointed the relator chief clerk, at a salary of \$1,500 a year and the relator accepted the appointment and drew the salary monthly at that rate and gave receipts therefor.

Thereafter the relator claiming to be entitled to the difference between the salary as fixed by the resolution of August 7th, and that actually paid to him, sought to compel the board of supervisors to pay this difference to him. *Held*, that his application was properly refused.

That the board had authority to fix the number, grade and compensation of the employees in the office of the district attorney, under Laws of 1875, chapter 482.

*People, ex rel. Bacon, v. Supervisors of Kings Co.*, 38 Hun, 373.

Every county treasurer hereafter elected or appointed shall receive as compensation for his services an annual salary, to be fixed by the board of supervisors. He shall not receive to his use any interest, fees or other compensation for his services, except in proceedings for the sale of lands for unpaid taxes as may be now provided for by law. It shall be the duty of said board to fix the salary of any treasurer hereafter elected, at least six months before his election, and such salary shall not be increased nor diminished during his term of office; and no county treasurer shall purchase, or be directly or indirectly interested in any purchase of any claim whatever, against the county of which he is the treasurer.

Laws of 1877, chap. 436, § 5.

The board of supervisors of any county may authorize the employment, by the treasurer, of such clerk, or clerks, and other assistants, as may be deemed necessary by such board, the compensation to be determined by such board.

*Id.*, § 6.

#### *Under Subdivision 10.*

By Laws of 1875, chapter 482, power of local legislation was conferred upon the boards of supervisors to make and administer within their respective counties, laws and regulations upon various subjects therein mentioned, among which was, the power "to authorize the laying out of highways of a less width than is now required by law, and of reducing the width of highways now in existence." No provision is made for any notice, or for any order to show cause, or for any hearing by interested parties, or for a petition. The board is not made a judicial body; it has not power to determine whether the road shall be laid out or not; all that it can do is to authorize it to be laid out at a less width than three rods. When this authority is given, the proceedings authorized by the statute to determine the necessity for it, must be instituted, in which interested parties are given an opportunity to be heard.

*People, ex rel. Downey, v. Dains*, 22 N. Y. Week. Dig. 326.

Subdivision 10 of section 1 of the foregoing act confers no power upon boards of supervisors to adopt a resolution or ordinance which shall have the effect, *proprio vigore*, of establishing such a road, or reducing the width of one already in existence, but merely authorizes them to provide, by suitable legislation, for the doing of those acts by commissioners of highways. Boards cannot authorize proceedings without application from or notice to all interested parties, and an opportunity for them to be heard. The proper course is for the board to pass an act authorizing the commissioners of highways, etc., to entertain such proceedings on proper application and notice, to be specified in the act.

Phillips v. Schumacher, 10 Hun, 405.

#### *Under Subdivision 18.*

Under the said Act of 1875 the board of supervisors has power to fix jail liberties, as a purely administrative act, or by the exercise of its legislative functions, as provided in section 1 of subdivision 18 thereof.

In acting upon the subject of the jail liberties, in the exercise of its administrative functions, the board is subject to the limitations contained in section 147 of the Code of Civil Procedure, and cannot establish liberties exceeding 500 acres in quantity; but in exercising the legislative power conferred upon it by said section of chapter 482 of 1875, it is not subject to the said limitations, and may establish jail liberties exceeding in extent 500 acres.

Roach v. O'Dell, 33 Hun, 320.

#### *Under Subdivision 20.*

Upon the application of certain tax payers of the town of New Utrecht the board of supervisors ordered a special town meeting "to consider and decide the question of purchasing a site for a town hall." At a meeting held in pursuance of this order, a resolution was adopted "That the question be determined by ballot of the votes of this town meeting, whether a site shall be purchased for a town hall, and a building purchased or erected for such hall. \* \* "

Upon the return of an affirmative vote on this resolution to the board of supervisors, authority was given to the town to purchase the site and erect the hall, and to borrow money for that purpose. *Held*, that the resolution adopted by the town meeting was a sufficient compliance with the Laws of 1875, chapter 482, section 1, subdivision 20, empowering the board of supervisors to authorize any town, when application shall be made thereafter by vote of a majority of the electors \* \* \* to purchase a site for a town hall, and erect a building thereon.

The power conferred by this section is not restricted by the Laws of 1847, chapter 197, and Laws of 1849, chapter 157, authorizing the erection of a town hall by the said town, and limiting the amount to be expended therefor.

Bergen v. Gubna, 10 Hun, 11, 12.

Under the Laws of 1875, chapter 482, section 1, subdivision 20, the board of supervisors having ordered a special town meeting "to consider and decide the question of purchasing a site for a town hall," a majority of the electors voting at such meeting may vote for the purchase immediately; without first voting to apply to the supervisors for authority.

Id. 11.

#### *Under Section 8.*

The question in dispute was whether the board of supervisors of Queens county could lawfully audit and allow a *per diem* allowance of \$3 to members of the board for committee work done by them, at times other than at sessions of the board. The defendant claimed that they were authorized to make such allowances, by section 8 of chapter 482, Laws of 1875, as amended by chapter 257, Laws of 1876.

The court at general term said: "Chapter 97, Laws of 1881, prescribing the compensation of supervisors, declares that no other compensation, fee, charge or allowance of any kind shall be made to any supervisor for his services, and that any supervisor who shall receive or vote for any allowance in vio-

lation of this section shall be guilty of misdemeanor. The effect of this section is to repeal the provision of the law of 1876, by which supervisors were allowed pay for services upon committee, even without the words of express repeal found in the latter part of the section. Laws of 1882, chapter 58, does not authorize payment for services upon committees. It follows that the credit of the defendants of \$3 per day was illegal and void."

Root v. Van Duzen, 32 Hun, 63.

Evidence as to a custom of the board of supervisors to allow its members \$5 *per diem*, for services on committees, or to prove what such services were worth, is not admissible in an action relating to such services. Laws of 1869, chap. 855, § 8, is conclusive as to their value.

Money fraudulently obtained by a supervisor, though voluntarily paid, may be recovered back.

Supervisors of Richmond Co. v. Van Clief, 1 Hun, 454.

## CHAPTER XI.

### BOARD OF SUPERVISORS—(Continued).

#### MISCELLANEOUS DUTIES.

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| <p><b>Sec. 588.</b> List of grand jurors.<br/> <b>589.</b> Duty of supervisors.<br/> <b>590.</b> Who to be omitted.<br/> <b>591.</b> Contents of lists, etc.<br/> <b>592.</b> Form of report of committee.</p> | <p><b>Sec. 621.</b> Form of application for headstone.<br/> <b>622.</b> To select newspapers.<br/> <b>623.</b> Form of resolution selecting newspapers.<br/> <b>624.</b> Allowance therefor.<br/> <b>625.</b> Election notices and official canvass.<br/> <b>626.</b> No power to provide for official printing of other county officers.<br/> <b>627.</b> To publish audits.<br/> <b>628.</b> To make statement.<br/> <b>629.</b> Town audits to be published.<br/> <b>630.</b> Reports as to town debts.<br/> <b>631.</b> To publish resolutions.<br/> <b>632.</b> Officers receiving money to make an annual report of same.<br/> <b>633.</b> Officers to pay moneys to county treasurer in ninety days after receipt of same.<br/> <b>634.</b> Duty of district attorney.<br/> <b>635.</b> Power to require officers to report.<br/> <b>636.</b> Excise commissioners to report.<br/> <b>637.</b> Loan commissioners' report.<br/> <b>638.</b> Loan commissioners' special report.<br/> <b>639.</b> District attorney.<br/> <b>640.</b> District attorney to report fines.<br/> <b>641.</b> Report as to fines and penalties.<br/> <b>642.</b> County judge.<br/> <b>643.</b> Coroner's report.<br/> <b>644.</b> Water commissioners' report.<br/> <b>645.</b> Railroad commissioners' report.<br/> <b>646.</b> Reports of benevolent institutions.<br/> <b>647.</b> Duties relative to county clerk.<br/> <b>648.</b> What are not county charges thereunder.<br/> <b>649.</b> Procuring duplicate county seals.<br/> <b>650.</b> County treasurer.<br/> <b>651.</b> bond to be approved by the board.<br/> <b>652.</b> Bonds to be given for sinking fund.<br/> <b>653.</b> Suit on bond.<br/> <b>654.</b> Disposition of moneys recovered.<br/> <b>655.</b> Banks of deposit designated by county treasurer to give bonds.<br/> <b>656.</b> Pay of county treasurer.<br/> <b>657.</b> Other decisions.<br/> <b>658.</b> Board of supervisors passing on account of county treasurer.<br/> <b>659.</b> Seal of county treasurer.<br/> <b>660.</b> Removal of county treasurer.<br/> <b>661.</b> Account and report of county treasurer.<br/> <b>662.</b> Duties relating to surrogate.</p> |
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| 694.      | Commissioners to be appointed.                           | 738.      | Benevolent institutions.  |
| 695.      | Inspectors to be appointed.                              | 739.      | Death, removal or discharge to be reported.                                 |
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| 697.      | Charter, how extended.                                   | 741.      | Penalty for neglect.  |
| 697A.     | Abandonment of road.                                     | 742.      | Filing of report.   |
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| 699.      | County railroads.  |           |   |
| 700.      | Further general powers.                                  |           |   |
| 701.      | Duties relative to the support of the poor.              |           |   |
| 702.      | Supervisors to determine number of superintendents.      |           |   |
| 703.      | Who are not eligible.                                    |           |   |
| 704.      | Term of office.  |           |   |



## 1. TO PREPARE LIST OF GRAND JURORS.

**§ 588. List of Grand Jurors.**—The supervisors of the several counties of this State, except the city and county of New York, at their annual meeting in each year, shall prepare a list of the names of three hundred persons, to serve as grand jurors at the courts of oyer and terminer, and courts of general sessions, to be held in their respective counties during the then ensuing year, and until new lists shall be returned.

3 R. S. 2558.

If the county judge of any other county, except the county of New York, shall at any time be of opinion that a greater number of persons than that herein required should be returned to serve as grand jurors in his county, he may, by an order under his hand, direct such number to be increased ; but such increase shall not exceed one-half the number herein required to be selected for such county.

Id. 2559, § 8.

**§ 589. Duty of Supervisors.**—Upon any order which is authorized by the last section being served upon the board of supervisors, they shall, at their next annual meeting, increase the number of persons returned by them to serve as grand jurors, pursuant to such order.

Id.

The Code of Criminal Procedure provides that a grand jury may be drawn for every court of sessions (other than that of the city and county of New York) when specially ordered by the court or by the board of supervisors.

§ 226.

If the order is made by the board of supervisors, a copy thereof, certified by the clerk of the board, must be filed by the county clerk at least twenty days before the term, and when so filed is conclusive evidence of the authority for drawing the jury.

§ 227.

This does not apply to New York, Kings and Albany counties.

**Who to be Placed on List.**—In preparing such lists, the said boards of supervisors shall select such persons only as they know, or have good reason to believe, are possessed of the qualifications by law required of persons to serve as jurors for the trial of is-

sues of fact, and are of approved integrity, fair character, sound judgment, and well informed.

3 R. S. 2558, § 3.

§ 590. **Who to be Omitted.**—Persons exempt by law from serving as jurors for the trial of issues of fact shall not be placed on any list of grand jurors, required by the preceding provisions.

Id.

§ 591. **Contents of Lists, etc.**—The lists so made out by the said board of supervisors shall contain the christian and surnames, at length, of the persons named therein, their respective places of residence, and their several occupations; it shall be certified by the clerk of the board of supervisors, and shall be filed in the office of the clerk of the county, within ten days after the first day of the meeting at which the same is herein directed to be made.

Id.

This list is generally made out by the supervisors of each town and presented to the board at the commencement of the session, so that it may be sent to the committee to complete, report and *file with the county clerk within ten days after the first day of the session.*

For form of such list and the duties of such supervisors, see *ante*, § 62.

## § 592. Form of Report of Committee on Grand Jury List.

TO THE HONORABLE THE BOARD OF SUPERVISORS OF

COUNTY:

Your committee, to whom was referred the duty of preparing the list of grand jurors to serve as such for the ensuing year, would report, that we have selected from the qualified inhabitants of said county the whole number, three hundred, a list of whose names is hereto annexed, to act as grand jurors therein, apportioned to the several towns and wards as follows:

### ANNSVILLE.

John W. Sullivan, farmer.....	Glenmore.
Wesley Hillman, farmer.....	Taberg.
George Gibbons, farmer.....	McConnellsville.
Jacob Mack, farmer.....	Taberg.
Philo S. Lake, farmer.....	Taberg.
John Finn, farmer.....	Glenmore.
William E. Ferguson, farmer.....	Taberg.

(*And so on with each town.*)

We recommend the adoption of the following resolution:

*Resolved*, That the persons, a list of whose names is hereto annexed and above mentioned, be and each of them is hereby designated and selected to act as grand jurors in and for said county, during the ensuing year and until a new list shall be returned.

All of which is respectfully submitted.

Dated , 188 .

O. F. HULSER,  
CHAIRMAN.

The adoption of this report would have the effect to adopt all resolutions contained in it. The proper motion in such cases is "to agree to the resolutions."

Roberts' Rules of Order, § 31.

If *no resolution* is embodied in a report, the adoption of the report would not have this effect, and a formal resolution therefor would be necessary.

This list should be certified by the clerk of the board and filed in the county clerk's office.

## 2. DUTIES IN RELATION TO COMMON SCHOOLS.

**§ 593. When to Increase Salary of Commissioners.**—Whenever a majority of the supervisors from all the towns composing a school commissioner district shall adopt a resolution to increase the salary of their school commissioner, beyond the \$1,000 payable to him from the free school fund, it shall be the duty of the board of supervisors of the county to give effect to such resolution, and they shall assess the increase stated therein upon the towns composing such commissioner district ratably, according to the corrected valuations of the real and personal estate of such towns.

Laws of 1864, chap. 555, tit. 2, § 8, as amended by Laws of 1885, chap. 340; 2 R. S. 1145.

The board of supervisors shall annually audit and allow to each commissioner within the county the fixed sum of \$200 for his expenses, and shall assess and levy that amount annually by tax upon the towns composing his district.

Id., § 9, as amended by Laws of 1867, chap. 84; 2 R. S. 1145.

**§ 594. To Raise Money.**—There shall be raised by tax, in the present and each succeeding year, upon the real and personal estate of each county within the State, one mill and one-fourth of a mill upon each and every dollar of the equalized valuation of such estate, for the support of common schools in the State; and the proceeds of such tax shall be apportioned and distributed as herein provided.

Id., tit. 3, § 1, as amended by Laws of 1867, chap. 406; 2 R. S. 1147.

No clerk of any board of supervisors, or other person who shall make out the tax list or assessment-roll of any town, shall omit to include and apportion among the moneys to be raised thereby the amount hereby required to be raised for the support of schools, by reason of the omission of the board of supervisors to pass a resolution for that purpose.

Id., § 2; 2 R. S. 1147.

**§ 595. When Comptroller may Withhold Moneys.**—The comptroller may withhold the payment of any moneys to which any county may be entitled, from the appropriation of the incomes of the school fund and the United States deposit fund for the support of common schools, until satisfactory evidence shall be furnished to him that all moneys required by law to be raised by taxation upon such county, for the support of schools throughout the State, have been collected and paid or accounted for to the State treasurer; and whenever, after the first day of March in any year, in consequence of the failure of any county to pay such moneys on or before that day, there shall be a deficiency of moneys in the treasury applicable to the payment of school moneys to which any other county may be entitled, the treasurer and superintendent of public instruction are hereby authorized to make a temporary loan of the amount so deficient, and such loan and the interest thereon at the rate of twelve per cent per annum, until payment shall be made to the treasury, shall be a charge upon the county in default, and shall be added to the amount of the State tax, and levied upon such county by the board of supervisors thereof, at the next ensuing assessment, and shall be paid into the treasury in the same manner as other taxes.

Id., § 4, as amended by Laws of 1867, chap. 406; 2 R. S. 1147.

**§ 596. Union School Districts.**—By Laws of 1875, chapter 482, section 1, subdivision 28, as amended by Laws of 1878, chapter 239, boards of supervisors have power "To authorize boards of trustees or of education in any union free school districts, or trustees of common school districts, established in conformity to the general or to any special law of this State, on the application of a majority of the taxable inhabitants of the district, voting on the question at a duly called meeting, to sell or exchange real estate belonging to the district for the purpose of improving or changing school-house sites, and to increase or diminish the number of members of said boards."

**§ 597. Dissolution of Union Free School Districts.**—In any union free school district established under the laws of this State, it shall be the duty of the board of education, upon the application of fifteen resident tax payers of such district, to call a special meeting, in the manner prescribed by law, for the purpose of determining whether application shall be made in the manner hereinafter provided, for the dissolution of such union free

school district and for its reorganization as a common school district or districts.

Laws of 1880, chap. 210; 2 R. S. 1199.

**If Two-Thirds Vote to Dissolve—Application to Board of Supervisors.**— \* \* \* \* Whenever, at any such meeting called and held as aforesaid, it shall be determined by a two-thirds vote of the legal voters present and voting, to be ascertained by taking and recording the ayes and noes, to dissolve such union free school district, it shall be the duty of the board of education to present to the clerk of the board of supervisors a certified copy of the call, notice and proceedings, and the said clerk shall lay the same before the board of supervisors at their next meeting. If the board of supervisors shall approve of the proceedings of such meeting, the clerk shall certify the same to the board of education. Such approval shall not take effect until the day preceding the last Tuesday of August next succeeding; but after that date such district shall cease to be a union free school district.

But if at such meeting a majority vote by yeas and nays determine not to dissolve such district, no other meeting for a similar purpose shall be held within three years thereafter.

Id., as amended by Laws of 1888, chap. 413; 2 R. S. 1199.

**§ 598. Action of Supervisors in Case of Consolidation of Two or More Districts.**—If any union free school district dissolved under the foregoing provisions shall have been established by the consolidation of two or more districts, it shall be lawful for the board of supervisors to direct that its territory be divided in two or more districts to correspond, so far as practicable, with the districts theretofore consolidated.

2 R. S. 1199; id., § 3.

**§ 599. Conditional Approval of Supervisors.**—The board of supervisors may make its approval of the proceedings of any such meeting held as aforesaid, conditional upon the payment, by the district which has been most greatly benefited by the consolidation in the way of building and other improvements, to the other district or districts, into which the said union free school district is divided, of such sum or sums of money as they may deem equitable.

Id., § 5.

**§ 600. Dividing School Commissioner District.**—By subdivision 36, Laws of 1875, chapter 482, as amended

by Laws of 1881, chapter 543, boards of supervisors are given power to divide any school commissioner district which contains more than two hundred school districts, and to erect therefrom an additional school commissioner district, and when such district shall have been formed, a school commissioner for said district shall be elected in the way and manner now provided by law for the election of school commissioner.

See § 600 A, *post*.

**§ 600A. Common School Fund.**—By chapter 294, Laws of 1840, the comptroller was authorized, with the consent of the State superintendent, to invest moneys of the common school fund, to be made by commissioners of loans of the United States deposit fund.

1 R. S. 507.

The board of supervisors in which such loans may be made shall possess the same powers, and perform the same duties in relation to loans under this act, as they are empowered and required to do in relation to loans made from the United States deposit fund.

*Id.*, § 4.

**§ 601. Cities Having Superintendent of Schools or Clerk of Board of Education, etc.**—

The several cities which already, or which shall hereafter under special acts, elect superintendents of common schools, or whose board of education choose clerks doing the duty of supervision under direction of the board of education, shall not be included in any commissioner's district created by this act, or authorized to be formed by the board of supervisors; and the several boards of supervisors in counties in which such cities are joined to towns in the formation of an assembly district may divide the county, exclusive of such cities, into school commissioners' districts, as they may deem advisable, but no town shall be divided in forming such districts.

Laws of 1856, chap. 179, as amended by Laws of 1883, chap. 414.

### 3. DUTIES RELATIVE TO THE STATE MILITIA.

**§ 602. Supervisors to Provide Battery or Company Armories.**—Whenever it shall appear by the certificate of the commander of the regiment or battalion to which any company organized under the provisions of this act belongs, or in the case of a battery or a company, not a part of a regiment or battalion, by the certificate of the commander of the brigade or division

to which it is attached, together with the certificate of the adjutant-general that such battery or company has reached the minimum number of enlisted men, who regularly attend the drills and parades of such battery or company, the inspector-general, the chairman of the board of supervisors, and county treasurer of the county in which such battery or company is located shall constitute a board to erect or rent, within the bounds of such county, for the use of such troop, battery or company, a suitable and convenient armory, drill-room, and place of deposit for the safe-keeping of the arms, uniforms, equipments, accoutrements and camp equipage furnished under the provisions of this act.

And whenever, in the opinion of the officer in permanent command, or in permanent charge of any armory, the same shall be unfit for the uses for which it is designed, he may make complaint in writing thereof to said board, which board shall forthwith examine into the condition of such armory, and shall have power thereupon to direct the alteration, repair, enlargement or abandonment of the same; and in case of abandonment, to provide another suitable armory.

Laws of 1888, chap. 299, § 60.

### **§ 603. Battalion or Regiment Armory.**

§ 61. Whenever the adjutant-general or the division commander and the inspector-general shall deem it expedient that an armory be provided for the use of two or more companies of a regiment or battalion, or jointly for the use of any of such companies and a battery or troop, or both, the supervisors of the county in which such regiment, battalion, battery or troop is located shall, upon the demand of the commandant of such regiment, battalion, battery or troop, erect or rent within such county a suitable and convenient armory, approved by the adjutant-general or the division commander and the inspector-general, except in places where such accommodation is provided in a State arsenal, unless companies in a regiment or battalion are already quartered in a building or buildings which have been fitted up for them by the county authorities; and whenever, in the opinion of the commandant in charge of any armory, the same shall be unfit for use as an armory, he may make complaint to the inspector-general, who shall forthwith examine into the condition of such armory, and, if found to be unfit for use, shall immediately report the fact to the board of supervisors, who shall thereupon direct the alteration, repair, enlargement or abandonment of the same, and in case of abandonment, provide another suitable armory.

Id., § 61, as amended by Laws of 1886, chap. 412.

### **§ 604. Expenses a County Charge.**

§ 62. The expenses of erecting, altering, repairing, enlarging or renting armories, purchasing land for the location of armories, and for providing the necessary apparatus, fixtures and means for heating, lighting and ventilating the same, and water and wash-closets in such armories, and for properly preserving the arms, equipments, uniforms and records kept therein, by the construction of suitable lockers, closets, gun racks and cases, shall be a portion of the county charge of such county, and shall be levied, collected and paid in the same manner

as other county charges are levied, collected and paid; but no money shall be appropriated for decorating any armory erected or rented under the provisions of this act, nor for any other purpose, to be paid out of moneys thus levied and collected, except for the said purchase, erection, renting, alteration, enlargement, repair and furnishing of such armories, unless the necessity for such expenditure shall have been examined into and certified to as necessary by the auditing boards of the respective organizations.

Id., 62, as amended by Laws of 1886, chap. 487.

The provisions as to New York county are omitted.

The authority to erect or rent an armory is devolved upon the supervisors only where a proper demand is made on them under the Military Code. They cannot exercise the power simply upon their own resolution.

Ford v. Mayor, 63 N. Y. 640.

The demand for an armory or drill-room must particularize the troops for which it is required.

Dickel v. Mayor, 6 Hun, 249.

## **§ 605. Armorer, Janitor and Engineer, Appointment of.**

§ 64. The commanding officer of each regiment, battalion, troop, battery or company shall appoint an armorer who shall, under his direction, take charge of the armory or places of deposit of his regiment, battalion, battery or company, and of all uniforms, arms, equipments and other property which shall have been issued under the provisions of this act therein deposited, and to discharge all duties connected therewith as shall be, from time to time, prescribed by such commanding officer. Where two or more companies, with or without a battery or batteries, are quartered in the same armory or arsenal, there shall be but one armorer for all such organizations, who shall be appointed by the senior line officer therein quartered. In the several cities of the State, the senior line officer occupying any armory or arsenal may also appoint a janitor whose special duty shall be to care for said armory, the repair and cleanliness of the same, and the furniture and fixtures; and in armories or arsenals heated by steam, he may appoint an engineer to have charge of the heating apparatus. If less than eight companies, or companies and batteries, are quartered in the same armory or arsenal, but one janitor shall be so appointed, who shall also have charge of the heating apparatus. Such persons so appointed shall receive a compensation not to exceed \$4 per day for the time actually and necessarily employed in their duties in armories located in the various cities, unless the city has a population of less than two hundred thousand, in which case such compensation shall be \$3 per day, and \$2 per day in the armories not located in cities; which compensation, as certified to by the commanding officer appointing such persons under the provisions of this section, shall be paid monthly, and shall be a county charge upon the county in which said armory is situated, and shall be audited, levied, collected and paid in the same manner as other county charges are audited, levied, collected and paid.

Laws of 1883, chap. 299, § 64, as amended by Laws of 1886, chap. 412.

The board of supervisors have no discretion, nor jurisdiction, to audit or review the amount of compensation *so certified*; they have no other duty in reference thereto, except to cause the amount to be levied, collected and paid like other county charges.

An allowance for *Sundays* necessarily employed in caring for the armory is not prohibited nor condemned by the statute, and the supervisors have no authority to deduct such allowance.

The People, *ex rel.* Archambault, v. Supervisors, 91 N. Y. 672.



**§ 606. Enrolled Militia.**—Whenever the commander-in-chief deems it necessary, he may order an enrollment of all persons, other than members of the national guard, liable to military duty, to be made by persons by him designated. Such enrollment shall state the name, residence, age and occupation of the person enrolled.

One copy of such enrollment is filed in the town or city clerk's office, and one in the county clerk's office, one in the adjutant-general's office and one kept by the enrolling officer.

Laws of 1883, chap. 299, § 3.

**§ 607. Duty of the Supervisor.**—Whenever it shall be necessary to call out any portion of the enrolled militia, other than the national guard, for active duty, the commander-in-chief shall direct his order to the mayor of any city, or to the supervisor of any town, who, upon receipt of the same, shall forthwith, and shall then and there proceed to draft as many of the enrolled militia in their city or town, or accept as many volunteers, as are required by the commander-in-chief, and shall forthwith forward to the commander-in-chief a list of the persons so drafted or accepted as volunteers.

Id., § 80.

**§ 608. Compensation of National Guard.**—All officers and enlisted men of the national guard, while on duty or assembled therefor, pursuant to the order of the sheriff of any county, or the mayor of any city, in cases of riot, tumult, breach of peace, resistance to process, or whenever called upon in aid of the civil authorities, shall receive the compensation provided by section 92 of this act; and such compensation, and the necessary expenses incurred in subsisting, quartering and transporting the troops, shall be audited, allowed and paid by the supervisors of the county where such service is rendered, and shall be a portion of the county charges of said county, to be levied and raised as other county charges are levied and raised.

Id., § 95. See *post*, "Fees."

The enrolled militia seem to be entitled to the same pay as the national guard.

Id., § 77.

#### 4. DUTIES RELATIVE TO ASSEMBLY DISTRICTS.

**§ 609.** The number of assemblymen for each county is determined by the legislature, after every census, under certain restrictions. After the number is apportioned, the legislature prescribes,

in counties having more than one assemblyman, that the board of supervisors divide their counties into a proper number of districts.

*This is done after a census is taken.*

## 5. DUTIES RELATIVE TO GAME AND FISH.

### § 610. Power of Supervisors to Regulate.—

It shall be lawful for the board of supervisors of any county, at their annual meeting, to make any regulations or ordinances protecting other birds, fish or game than those mentioned in this act; and, also, for the further protection of such birds, fish or game as are in this act mentioned, except wild deer, and to this end to prohibit hunting or fishing in particular localities or waters lying within their respective counties for limited periods and during certain months of the year, and to prescribe punishments and penalties for the violation thereof, and adopt necessary measures for the enforcement of such punishment and the collection of such penalties. And such regulations and ordinances shall be published in the papers in such county in which the session laws are published, and a certified copy thereof shall be filed in the office of the clerk of the county; Provided, however, that nothing herein contained shall be construed as conferring upon the board of supervisors of any county the right or authority to prohibit the owner or owners, in whole or in part of lands and waters wholly private, or the lessee or lessees thereof, whether such owner or owners, lessee or lessees be an individual or individuals, association or associations, society or societies, corporation or corporations, from angling and taking fish in lawful manner during the months now allowed by the laws of this State. This act is intended to apply only to such owner or owners, in whole or in part, of lands and waters, or the lessee or lessees thereof who shall have complied with the provisions of the Laws of 1879, chapter 534, § 27, and the acts amendatory thereof.

Laws of 1879, chap. 534, as amended by Laws of 1884, chap. 212, § 37.

The birds, fish and game mentioned in these acts are wild deer, moose, cariboo, wild duck, goose or brant, partridge, prairie chicken, quail, hare, rabbit, woodcock, grouse, eagle, woodpecker, nighthawk, yellowbird, wren, marten, oriole, robin, bobolink or any song bird, meadow lark, starling, wild pigeon, trout, bass and muscalonge, and black and gray squirrels.

The board are also authorized to raise by tax such sum, not exceeding \$1,000, as they deem proper to aid in enforcing the provisions thereof.

They may also provide for the protection and preservation, subject to the laws of this State, of game, animals and birds, of fish and shell-fish in all waters within

the territorial jurisdiction of the county, and prescribe and enforce the collection of penalties for the violation of any laws or regulations they may make pursuant to the provisions of this subdivision.

Laws of 1875, chap. 482, § 1, subd. 16.

The supervisors cannot restrict the right of taking fish from navigable waters to any particular class of persons.

*Hallock v. Dominy*, 7 Hun, 52.

**§ 611. May Authorize the Election of a Game Constable.**—The boards of supervisors of the several counties of the State (except Kings county, where the board appoint a game constable for the entire county), may, by the affirmative vote of a majority of the members elected, at a regular meeting of such boards, respectively, authorize the election in each or any of the towns or cities of their respective counties of one or more officers to be designated the game constable, to be chosen at town meetings as other town officers are chosen, and hold office for the term of one year. His duties are specified in the act.

Laws of 1871, chap. 721, § 81, and Laws of 1879, chap. 534, § 38.

## **Expenses, etc., when County Charge.**

See "County Charges."

## 6. MISCELLANEOUS.

**§ 612. Power to Accept Donations.**—A board of supervisors had powers given to them, by an act of the legislature, to appoint three building commissioners to locate and erect county buildings, at a place specified, who should have authority to consider donations of land and money, in determining the location. By their resolution appointing commissioners, they directed the commissioners to select and procure the title to a proper site, for a sum not exceeding \$1, and to proceed and erect the buildings thereon, but neither to obtain the title, nor take any binding steps until security should be given, by a bond of individuals and otherwise, guaranteeing payment for the erection of the buildings without expense to the county. *Held*, that the power to accept donations of money was vested in the supervisors, by whom provision for supplying the means for erecting the buildings had to be made, and not in the building commissioners; and that a bond, given as security for the payment of donations, under the resolution, was within the policy of the law, and valid. And the building commissioners having proceeded, according to the terms of the resolution, to locate, erect and

furnish the county buildings, in part upon the faith of a bond given to secure the payment of money promised in that respect; *held*, that such bond was founded upon sufficient consideration.

Marsh v. Chamberlain, 2 Lans. 287.

The board of supervisors of a county is competent to take and hold for the county an absolute fee in lands acquired for the site of county buildings.

Trustees of Havana v. Supervisors of Schuyler, 5 T. & C. 703.

Or to lease real estate when needed.

Davies v. Mayor, 83 N. Y. 207.

**§ 613. May not in Ordinance Discriminate Against Inhabitants of Other Localities.**—It shall not be lawful for the authorities of any county, city or village to impose upon the inhabitants of any other county, city or village within this State, carrying on or desiring to carry on any lawful trade, business or calling within the limits thereof, any restriction or condition whatever, except such as may be necessary for the proper regulation of such trade, business or calling, and such as apply equally and impartially to the citizens of all parts of the State alike, and all ordinances in violation of the provisions of this act are hereby declared to be null and void. But the provisions of this act shall not apply to the ordinances or regulations of any county, city or village in this State, in reference to traveling circuses, shows and exhibitions.

Laws of 1878, chap. 212, as amended by Laws of 1879, chap. 417.

**§ 614. Assistant District Attorney.**—It shall be lawful for the supervisors of any county in this State, having at its last census a population exceeding seventy thousand, to authorize the district attorney of such county to appoint a suitable person to be the assistant of such district attorney.

Laws of 1872, chap. 587; 2 R. S. 971.

**Compensation.**—Every such assistant district attorney shall be compensated for his services at and after such annual rate as shall be determined by the board of supervisors of the county in and for which he shall be appointed.

Id., § 3.

This act does not apply to any county where the appointment of an assistant district attorney is now authorized by law.

Id., § 4.

**§ 615. Power to Substitute Attorney.**—A party has no right, without showing any cause except his own will, to

substitute one attorney for another without payment of the costs earned. And this rule applies to a board of supervisors.

*Supervisors of Ulster v. Brodhead*, 44 How. 411.

Where a board of supervisors, by their vote, discharge a firm of attorneys who have been acting in their employ, merely because the board chooses to do so, with a view to substitute another attorney for the board, they must pay the firm their reasonable claims, which may be ascertained by reference. And such attorneys are not bound to consent to a substitution, or to deliver the papers upon which they have a lien, until the amount of their just demands is ascertained by the court or a referee and paid them.

*Id.*

**To Submit to Arbitration Claims.**—It seems that the board of supervisors has power to submit to arbitration the validity and reasonableness of a claim made against the county.

*People, ex rel. Benedict, v. Supervisors*, 24 Hun, 414.

**§ 616. May Compromise Judgment.**—County supervisors may compromise and settle a judgment recovered by them for the county, pending an appeal therefrom.

The power is incident to the power to sue, and so arises from their authority “to make such orders concerning the corporate property as they may deem expedient.”

The board of supervisors accepted a proposition to compromise and settle a judgment recovered in favor of the county against the defendant, pending the latter's appeal therefrom in the court of appeals, and directed their attorneys to make and enter into stipulations, to be signed by the defendants in person and their attorneys, carrying out the compromise, and the county treasurer to make use of the funds arising therefrom. The stipulation, which required the signatures of the defendants and their attorneys, as well as of the plaintiff's attorneys, was soon after presented to the plaintiff unsigned by its attorneys, but otherwise complete, and was accepted and ordered to be placed on file; the county treasurer also reported, as the fact was, that he had used, as directed, a payment made by the defendants according to the terms of the compromise, and the report was accepted and directed to be filed. *Held*, that the supervisors and their successors in office were bound by the stipulation, and could not subsequently rescind their action in respect thereto.

*Board of Supervisors of Orleans county, appellants, v. Samuel C. Bowen and others, respondents*, 4 Lans. 24.

**§ 617. Informal Action of Town Meetings, and of Town Officers, how Legalized; Correction of Error in Assessments, Etc.; Appeals; Taxes so Refunded, how Apportioned.**—The board of supervisors of any county, except New York, Kings and Albany, may by a vote of two-thirds of all the members elected

thereto, legalize the informal acts of any town meeting in raising money for any purpose for which such money is authorized to be raised by law, and by a like vote to legalize the irregular acts of any town officer, performed in good faith, and within the scope of his authority; and also, to correct any manifest clerical or other error in any assessments or returns made by any town officer to such board of supervisors, or which shall properly come before such board for their action, confirmation or review; and it may refund to any person the amount collected from him of any tax illegally or improperly assessed or levied. In raising the amount so refunded such board shall adjust and apportion the same upon the property of the several towns and wards of the county as shall be just, taking into consideration the portion of State, county, town and ward tax included therein, and the extent to which each town or ward has been benefited thereby.

Laws of 1869, chap. 855, § 5, as amended by Laws of 1885, chap. 326.

The following act relating to Kings county is inserted in full. The form of the act is peculiar. If the purpose of it is to give Kings county the same powers possessed by other counties the former act could have been easily amended therefor. What effect the latter act may have in relation to the former is not yet settled.

SECTION 1. The board of supervisors of each county in this State, containing upward of three hundred thousand inhabitants, shall have power, by a two-thirds vote of all the members elected thereto, to legalize the informal acts of any town meeting within such county in raising money for any purpose for which such money is authorized to be raised by law, and, by like vote, to legalize irregular acts of any one or more town officers performed in good faith, and within the scope of their authority, and, also, by like vote, to correct any manifest clerical or other error in any assessments or returns made by any one or more town officers to such board of supervisors, or which may or shall have properly come before such board for their action, confirmation or review; and it may cause to be refunded to any person the amount collected from him of any tax illegally or improperly assessed or levied. In raising the amount so refunded, or the amount necessary to supply the deficiency caused by the correction of any errors in such assessments as aforesaid, such board shall, in the same or next ensuing annual tax levy, adjust and apportion said amount upon the property of the several towns and wards of the county, as shall be just, taking into consideration the portion of State, county, town and ward tax included therein, and the extent to which each town or ward has been benefited thereby.

§ 2. This act shall not apply to the city and county of New York.

§ 3. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 4. This act shall take effect immediately.

Laws of 1886, chap. 306.

As to the decisions under this act relating to assessment-rolls.

See *ante*, § 348.

The same principles are applicable to the other powers conferred by this section.

## **§ 618. To Fix and Determine Compensation of Officers for the Conveyance of Juvenile**

**Delinquents to Houses of Refuge, and of Lunatics to Insane Asylums.**—The boards of supervisors in the several counties of this State are empowered, and it is made their duty, annually, to fix and determine the compensation to be allowed and paid to officers for the conveyance of juvenile delinquents to the houses of refuge, and of lunatics to the insane asylums; and no other greater amount than that so fixed and determined shall be allowed and paid for such service.

Laws of 1874, chap. 446, tit. 1, § 29; Laws of 1859, chap. 254; 3 R. S. 2584-1907.

To fix fees and expenses for conveying convicts to the penitentiary.

See "Sheriffs," *ante*.

**§ 619. Burial of Deceased Soldiers, Sailors and Marines.**—It shall be the duty of the board of supervisors in each of the counties of this State to designate some proper authority other than that designated by law for the care of paupers and the custody of criminals, who shall cause to be interred the body of any honorably discharged soldier, sailor or marine, who served in the army or navy of the United States during the late Rebellion, or in the war with Mexico in the years 1846, 1847 and 1848, who shall hereafter die without leaving means sufficient to defray funeral expenses, but the expenses of such funeral shall not in any case exceed the sum of \$35. In case the deceased has relatives or friends who desire to conduct the burial, and who are unable or unwilling to pay the charges therefor, then the said sum shall be paid to them, or their representative, by the county treasurer, upon due proof of the death and burial of any person provided for by this section.

Any interment provided for by the provisions of this act shall not be made in a cemetery, or in any cemetery or plot, used exclusively for the burial of the pauper dead. The grave of any such deceased soldier, sailor or marine, and the grave of any honorably discharged soldier, sailor or marine, who served in the army or navy of the United States during the late Rebellion, who shall have been heretofore buried in any of the counties of this State, but whose grave is not marked by a suitable headstone, and who died without leaving means to defray the expense of such headstone, shall be marked by a headstone containing the name of the deceased, and if possible the organization to which he belonged or in which he served; such headstone shall cost not more than \$15 and shall be of such design and material as shall be approved by the board of supervisors, and the

expense of such burial and headstone, as above provided for, shall be a charge upon, and shall be paid by the county in which the said soldier, sailor or marine shall have died ; and the board of supervisors of such county is hereby authorized and directed to audit the account and pay the expense of such burial and headstone in the same manner in which the accounts of such officer as shall be charged with the performance of such duty as above provided shall be audited and paid.

Laws of 1881, chap. 203, as amended by Laws of 1884, chap. 319, and Laws of 1885, chap. 34.

§ 620. Form of Application to Defray Funeral Expenses.

Application is hereby made to the committee of Oneida county for the interment of deceased soldiers, etc., for relief in the burial of ... , who died in the town of....., in Oneida county, on the ..... day of....., 188.., based upon the following facts:

That said..... was a..... in the late war of the Rebellion; that he enlisted on or about the month of....., 186...., in Co..... Regiment, and served therein until about the month of....., 186.., when he was honorably discharged therefrom. That said..... died without leaving means sufficient to defray his funeral expenses.

*\* The deceased has relatives or friends who desire to conduct the burial, but who are unable or unwilling to pay the charges therefor.*

.....,  
APPLICANT.

\* This clause is to be erased if it is desired that the committee shall conduct the burial.

ONEIDA COUNTY, ss.:

....., being duly sworn, says that..... is the..... of the within named....., deceased, and resides at the town of....., in said county. That the facts stated in the foregoing application are true to the best of deponent's knowledge, information and belief.

Sworn to before me, this.....day }  
of....., 188.. }  
....., }  
..... }

I hereby approve of the foregoing application.  
.....,  
TOWN COMMITTEE.

Application granted.  
..... } COMMITTEE.  
..... }

The editor is under obligations to Mr. John Kohler, ex-county treasurer of Oneida county, for the above form.



## § 621. Form of Application for Headstone.

### APPLICATION FOR SOLDIERS' HEADSTONE.

(To be made to committee of supervisors, on approval of town committee.)

GENESEE COUNTY, ss.:

....., being duly sworn, deposes that.....  
for whose headstone application is hereby made, was an honorably discharged  
soldier of the civil war; that he died a resident of this county; that he is buried  
in an unmarked grave; that he did not leave means to provide a headstone, and  
that his friends are unable or unwilling to erect one.

Subscribed and sworn to before me, }  
....., 188.. }  
..... }

The foregoing application is hereby approved.  
....., 188..

..... } TOWN COM.  
..... }

### INSCRIPTION.

Name.....  
Military organization.....  
Date of death.....  
Aged.....  
To be erected in..... cemetery, town of.....

P. O. address of person who will direct *where* it is to be erected..  
To Mr..... : The above application and proof being  
satisfactory, you are hereby authorized and directed to prepare the headstone  
solicited, in accordance with contract made by you with board of supervisors, and  
to erect the same, when its approval and acceptance by the committee of the  
board is indorsed hereon.

....., 188..  
..... } COMMITTEE OF SUPERVISORS.  
..... }

The above is taken from the journal of the Genesee county board of super-  
visors, and is a very good one.

It is said, that the United States Government will, upon application to the  
quartermaster-general at Washington, D. C., forward, free of charge, to the  
nearest railroad station, suitable headstones. The editor has not had an oppor-  
tunity to verify this statement, and does not vouch for its accuracy.

**§ 622. To Select Newspapers. 1. Laws.**—All  
laws of a general nature which shall hereafter be passed by the  
legislature of this State shall be published in at least two newspapers  
in each county of this State, where there is or may be hereafter two  
newspapers published; and in one newspaper in each county where  
but one newspaper is published or may be published.

Laws of 1845, chap. 280, § 1; 1 R. S. 435.

All laws of a local nature which shall hereafter be passed by the  
legislature of the State shall be published in like manner in each of  
the counties interested in the same.

Id., § 2.

§ 3. It shall be the duty of each board of supervisors in the several counties of this State, at their annual meeting, or at any special meeting called for the purpose, to appoint the printers for publishing the laws in their respective counties. The appointment shall be made in the following manner: The members of the board of supervisors representing respectively each of the two principal political parties into which the people of the county are divided, or a majority of the members of the board of supervisors representing respectively each of such political parties, shall designate, in writing, a paper fairly representing the political party to which they respectively belong, to publish the laws, and such designation shall be signed by the members making it, and filed with the clerk of the board of supervisors, and the two papers so designated shall publish the laws. In case the members of the board of supervisors representing either of the two principal political parties into which the people of the county are divided, or a majority of such members, cannot agree upon a paper, then, in that case, they shall make report to that effect to the clerk of the board of supervisors, and such board shall, by resolution, designate a paper fairly representing such political party to publish the laws. If there shall be but one paper published in the county, then, in that case, the laws shall be published in that paper.

Id., § 3, as amended by chap. 515, Laws of 1886.

Expense is a county charge raised by tax.

Id., § 5.

### § 623. Form of Resolution Selecting Newspapers.

#### RESOLUTION, No.

A resolution to determine and select two newspapers in which to publish election notices and the official canvass, passed in pursuance of the provisions of chapter 482 of the Laws of 1875 and its amendments, by a vote of a majority of all the supervisors elected to the board of supervisors of Oneida county voting in favor thereof, by yeas and nays.

*Resolved*, That the *Roman Citizen* and the *Rome Sentinel* be and they are hereby selected and designated by this board as the newspapers to publish the official canvass and election notices for the ensuing year, which said newspapers are hereby determined and adjudged to be of opposite political character within the meaning of said laws.

§ 624. Allowance Therefor.—The compensation for publishing the session laws must be fixed by the board of supervisors, at not more than *fifty* cents for each folio.

Code of Civil Procedure, § 3317.

**§ 625. 2. Election Notices and Official Canvass.**

Boards of supervisors have authority, by resolution duly entered and published in their minutes, to determine, except in the county of Kings, in what newspapers, not to exceed two, the election notices issued by the secretary of State, and the official canvass shall be published, and *to fix the compensation for such publication*. But in cases where such publication shall be ordered to be made in two newspapers, such papers shall be of opposite political character.

Laws of 1875, chap. 482, § 7, subd. 3; 2 R. S. 950.

In determining whether the two papers receiving the highest and next highest number of votes are of opposite politics and fairly represent the two principal political parties into which the people of the county are divided, the board of supervisors acts judicially and *mandamus* will not lie to control its action.

People v. Supervisors of Cattaraugus, 19 Hun, 11.

When a newspaper is designated by a board of supervisors as one of the papers in which the session laws shall be published, in the absence of any contract with the proprietor, as to his compensation, he is entitled to the compensation prescribed by law; and the board of supervisors has no right to reduce the allowance to him below that amount.

People v. Supervisors of Cortland, 58 Barb. 139; S. C., 40 How. 53.

A return to an alternative writ of *mandamus*, that two newspapers were "duly designated," and "fairly represent the two principal political parties in said county," is bad. Any citizen of the county may maintain the writ.

People v. Supervisors, 56 N. Y. 249.

**§ 626. No Power to Provide for Official Printing of Other County Officers.**—To provide, in advance, for the official printing of the several county officers is no part of the duty of the board of supervisors. The board has no authority or power, except what is derived from the statute, and the statute does not authorize or empower them to contract, in advance, for such printing.

People v. Supervisors of Cortland, 58 Barb. 139; S. C., 40 How. 53.

They have no power or authority to direct the clerk of the board whom he shall employ to do his official printing; or to direct, in advance, what price he shall pay, or agree to pay.

Id.

The contracts of a county clerk, in the name of the county, for printing necessary and proper to enable him to perform the duties of his office, are binding upon the county.

Id.

**§ 627. 3. To Publish Audits and Equalization Proceedings.**—It shall be the duty of the boards of supervisors in each county in this State annually to publish, in one or

more public newspapers in such county, the name of every individual who shall have had any account audited and allowed by said board, and the amount of said claim as allowed, together with the amount claimed, and also their proceedings upon the equalization of the assessment-roll.

Laws of 1839, chap. 369; 2 R. S. 929.

**§ 628. 4. Statement as to Supervisors' Compensation, etc.**—It shall be the duty of clerks of boards of supervisors on the thirty-first day of December, or within ten days previous thereto, in each year, to make out a statement showing,

1. The amount of compensation audited by the board of supervisors, to the members thereof, severally, within the year, and the items and nature of such compensation as audited.

2. The number of days the board shall have been in session within such year, and the distance traveled by the members respectively, in attending the meeting of the board.

3. Whether any accounts were audited or allowed without being verified according to law, for any member of the board of supervisors, or any other person, and if any, how much, and for what.

And such statement shall be certified by such clerk, and be printed in a newspaper printed in the county, in the manner that the accounts audited by boards of supervisors are now required by law to be printed, within two weeks after said statement shall be so made out, and it shall be the special duty of such clerk to see that the same is so published, and for every intentional neglect so to do, such clerk shall be deemed guilty of a misdemeanor.

Laws of 1847, chap. 455, § 14; 1 R. S. 849.

**§ 629. 5. Town Audits to be Published.**—It is the duty of boards of town auditors to make annually brief abstracts of the names of all persons who have presented to said board accounts to be audited, the amounts claimed by each of said persons, and the amounts finally audited by them respectively, and to deliver said abstracts to the clerk of the board of supervisors, and the said clerk is to cause the same to be printed with the statements required to be printed by him by the above section.

Id., § 24; 1 R. S. 851.

These last two sections do not apply to Kings, Queens, Suffolk or New York counties.

Id., § 26.

**§ 630. Reports as to Town Debts.**—The supervisor of every town having a public debt, consisting of bonds or other

evidences of debts issued on the credit of the town, is required to report in tabular form specifying the different acts under which the bonds or debts were issued, with the rate of interest, the amount unpaid at the time of his election, the amount paid at date of his report, and coming due during his term of office.

Laws of 1870, chap. 552; 1 R. S. 852.

**Report to be Published.**—The report so made to the board shall be published in the annual report of the proceedings of said board.

Id., § 3. See *ante*, § 59.

**§ 631. To Publish Every Resolution Adopted in Pursuance of Chapter 482, Laws of 1875, etc.**—And every resolution adopted in pursuance of the provisions of the first section of this act, and of any previous act conferring legislative powers on boards of supervisors, shall be prefixed by a title concisely expressing its contents, following which shall be a reference to the law or laws from which the authority to pass the resolution shall be derived, and a statement of the vote, whether by two-thirds or a majority of all, by which it was passed, and in cases where it is required that the resolution should receive the assent of the supervisor of the town to which it applies, the fact whether or not it received such assent shall be also stated; and all resolutions so adopted shall be numbered in the order of their passage, and certified by the chairman and clerk, and, within six weeks after the close of each session, published in the newspapers in the county appointed to publish the session laws of the legislature.

Laws of 1875, chap. 482, § 2.

A full compliance with the above provisions of law requires every resolution passed under the act of 1875, and of any previous act conferring legislative powers, to be numbered, prefixed by a title, a reference to the law authorizing its passage, a statement of the vote, etc. There seems to be no real need of such a requirement as to many of such resolutions. The evident intent of the framer of the law was to require resolutions, *in the form of legislation*, to have the formalities above. An amendment of the law is quite desirable.

**§ 632. Officers to Report to Supervisors—Officers Receiving Money to Make an Annual Report of Same.**—Each officer in the several counties of this State who shall receive, or is authorized by law to receive, any money on account of any fine or penalty or other matter, in which his county, or any town or city therein, shall have an interest, shall make a report in writing, every year, bearing date the first day of November, in which he shall state particularly the time when, and

the name of the person or persons from whom such money has been received, and also the amount and on what account the same was received, and also all sums remaining due and unpaid, which report shall include all receipts of moneys before mentioned that he has received during the year next preceding the date of his report, and if no such moneys have been received, his report shall state such facts. Said report shall be made to the board of supervisors of his county, duly verified by oath, and filed with the clerk of said board on or before the fifth day of November, in each and every year, and no officer shall be entitled to receive payment for services, salary or otherwise, from the supervisors or from a city or county treasurer, unless he shall file with the supervisors his affidavit that he has made such report and has paid over all moneys which he is bound to pay over.

Laws of 1863, chap. 404, § 1, as amended by Laws of 1864, chap. 341; 2 R. S. 980.

**§ 633. Officers to Pay Moneys to County Treasurer in Ninety Days After Receipt of Same.**—Each officer who shall have received such moneys as provided in the preceding section of this act shall, within ninety days after the receipt thereof, pay the whole amount so received, without any deductions for costs or charges in collecting the same, to the treasurer of his county, who shall give to such person duplicate receipts therefor, one of which receipts shall be attached to the annual report to the board of supervisors hereinbefore provided to be made; provided that nothing in the preceding section contained shall be construed to apply to moneys received by any town or city officer in his official capacity as such town or city officer, specially appropriated for any town or city purpose.

Id., § 2.

**§ 634. Duty of District Attorney.**—It shall be the duty of the district attorney of the several counties of this State to sue for and recover, in behalf of and in the name of his county, the money received by any officer for or on account of such county or any town or city therein, and not paid to the county treasurer of such county as provided in the preceding section of this act.

See *post*, as to District Attorney.

Id., § 3.

All moneys belonging to any town or city in such county, which shall be received by the county treasurer, shall be distributed to the several towns or cities entitled to the same, by resolutions passed by

a majority of the board of supervisors at any legal meeting thereof, which resolutions shall be entered at length in the minutes of the proceedings of said board.

Id., § 4.

Each officer of the several counties of this State who shall neglect or refuse to make the reports or pay over moneys received by him, as provided in sections 1, 2 and 3 of this act, shall be deemed guilty of a misdemeanor.

Id., § 5.

### **§ 635. Power to Require Officers to Report.**

—The board of supervisors have power to require any county officer, or any officer whose salary is paid by the county, to make a report under oath to them, on any subject or matters connected with the duties of their offices; and said officers are hereby required to make such report whenever called upon by resolution of any such board; and if any such officer neglect or refuse to make such report, he shall be deemed guilty of a misdemeanor.

Laws of 1849, chap. 194, § 4, subd. 14.

**§ 636. Excise Commissioners to Report.**—The commissioners of excise in the several counties in this State are hereby required to make annual reports to the boards of supervisors of said counties, at each annual meeting of said boards, and within the first five days from the first day of such annual meeting in each and every year after the passage of this act.

Laws of 1860, chap. 274; 3 R. S. 1986.

Such report shall be in writing, and shall be signed by the said commissioners, or a majority of them, and shall contain a true statement of all moneys received by them as such commissioners in their official capacity during the year preceding the date of said report, and also the name of every person in said county to whom the said commissioners have granted a license to sell strong and spirituous liquors, under any section of the excise law, passed April 16, 1857.

Id.

Such report, when so made as aforesaid, shall be verified by oath or affirmation of the said commissioners, or a majority of them, and shall contain a written statement indorsed thereon, signed by the county treasurer of the county, setting forth the whole amount of money paid over to them by said commissioners during the same year in which such report shall be made, and the said commissioners shall also report to said boards the whole amount of fines or penalties

received by them in their official capacity from any and every person for any violation of the act entitled "An act to suppress intemperance, pauperism and crime," passed April 16, 1857, and in case said commissioners, or either of them, shall neglect or refuse to report as aforesaid, he or they shall forfeit and pay \$100 for every such neglect or refusal, to the use of the people of the county in which he or they may reside.

Laws of 1860, chap. 274.

Probably this act does not apply except to counties where all the poor are a county charge.

**§ 637. Loan Commissioners' Report.—Duties as to United States Deposit Fund.**—It shall be the duty of the commissioners appointed for loaning the United States deposit fund to exhibit to the board of supervisors of their respective counties, at each annual meeting of the board, all the mortgages and other securities taken by them or their predecessors in office for moneys loaned under and in pursuance of the act of 1837, together with their books of accounts, minutes and vouchers, in order that the board of supervisors may ascertain whether the moneys committed to the charge of such commissioners have been loaned and continued to be kept as loans according to law.

It shall be the duty of the board of supervisors, at each annual meeting of the board, to carefully examine all such mortgages and securities, accounts and minutes so to be annually exhibited to them, in reference to the state in which they shall find the said moneys, and to their safety and the sufficiency of the securities taken for the payment thereof, and to give to the said commissioners such directions as to taking additional security from the borrowers as the said board of supervisors shall deem proper and necessary; and the said board shall forthwith certify, under their hands, the state in which they shall find the said moneys, and the result of such examination, and what directions they have given to the said commissioners as to their taking such additional security and to transmit such certificate by mail to the comptroller.

Laws of 1837, chap. 150, §§ 50, 51; 1 R. S. 522.

By Laws of 1847, chap. 476, if any of the premises covered by a mortgage given to said commissioners was sold, they were allowed to open a separate account with such purchaser concerning the same.

**§ 638. Report Thereof.**—The commissioners shall make a special report of their proceedings in each case under this act, to



the board of supervisors, at their first annual meeting after the new account is opened.

Id., § 4; 1 R. S. 529.

**§ 639. District Attorney's Salary, how Fixed.**

—The board of supervisors have power to fix the salary of the district attorney.

Laws of 1875, chap. 482, § 1, subd. 2.

**§ 640. Fines and Penalties Imposed or Inflicted for the Benefit of Common Schools.—District Attorney to Report Fines.**—

Every district attorney shall report annually to the board of supervisors all such fines and penalties imposed in any prosecution conducted by him during the previous year; and all moneys collected or received by him or by the sheriff, or any other officer, for or on account of such fines and penalties, shall be immediately paid into the county treasury, and the receipt of the county treasurer shall be a sufficient and the only voucher for such moneys.

Laws of 1864, chap. 555, title 3, § 23; 2 R. S. 1151.

**§ 641. Report as to Fines and Penalties.**

See *ante*.

In relation to assistant district attorney, see *ante*.

**§ 642. County Judge.**—The county judge is required to report as to his proceedings and decisions in relation to indigent lunatics committed to the asylum.

See "Support of the Insane."

Also all commitments or appointments to asylums, reformatories, penitentiaries, etc.

See "Benevolent Institutions."

**§ 643. Coroner's Report.**

See "County Charges."

**§ 644. Village Water Commissioners' Report.**

—By Laws of 1875, chapter 181, a board of water commissioners in villages was provided for, to furnish "pure and wholesome water to the inhabitants thereof."

Said commissioners shall annually, on May 1st of each year, and at all such other times as required by the board of supervisors of a

county in which said village, or some portion thereof, is situated, deliver to said board of supervisors a detailed statement of all their accounts, a general statement of all their work and condition of their affairs and state of finances, including a full detail of the amount expended in the progress of the work, and a particular statement of any deficiency as to the water rents, in meeting the principal and interest of sum borrowed, as in the previous section hereinbefore referred to; and all books and papers of every kind and description kept by said commissioners, upon which are entries of their transactions as such, shall at all times be subject to the inspection by said board of supervisors, and by every elector of said village.

Laws of 1875, chap. 181, § 17, as amended by Laws of 1883, chap. 255; 1 R. S. 912.

### **§ 645. Railroad Commissioners' Report.**

See Laws of 1880, chap. 336, § 2, *ante*, and Laws of 1886, chap. 316, § 59, *ante*.

### **§ 646. Reports of Benevolent Institutions.**

See "Benevolent Institutions."

## **Reports of the Several Supervisors.**

See chap. III.

**§ 647. Duties Relative to County Clerk—Bond to be Given by County Clerk.**—Except where otherwise provided by law, it shall be the duty of each county clerk hereafter elected, upon assuming the duties of his office, to execute a bond, with at least two sureties, to the board of supervisors of the county in which he is clerk, in such sum and with such sureties and in such form as the board of supervisors of said county shall prescribe and approve, conditioned that he will faithfully execute and discharge the duties of county clerk, and will truly account for all moneys deposited with him pursuant to the order of any court, or by his predecessor in office. and pay them over as directed by law or by order of court.

Laws of 1881, chap. 118; 2 R. S. 964.

**Custody of Books, Records, etc.**—The clerk of each county shall have the custody of all books, records, deeds, parchments, maps and papers now deposited, or that may hereafter be deposited or kept in his office; and it shall be his duty,

from time to time, carefully to attend to the arrangement and preservation thereof.

2 R. S. 960, § 52.

He shall, at the expense of the county, provide proper books for the recording of deeds, mortgages or other conveyances acknowledged or proved, according to law; and for the recording of all other papers, documents or matters required by law to be recorded in his office. He shall also receive and file all papers and documents directed to be filed therein.

Id., § 53.

As to the powers of boards of supervisors over these records and books, see *ante*, “Decisions under Laws of 1869, chap. 855.”

Laws of 1844, chapter 125, require every county clerk to keep a book in which shall be entered all fees, charged or received by him for official services, the time of rendering the same, the persons, if known to him, for whom the same were rendered, and a brief statement of the nature of the service for which any fees are charged or received.

Laws of 1844, chap. 125, § 1.

## To be Open for Public Inspection.

Such books shall be open for inspection, without fee or reward, at all times when the office in which they are kept shall be open for the transaction of business.

Id., § 2.

He is also required to send a sworn statement of such matters to the secretary of State.

See §§ 3 and 4.

**§ 648. What are not County Charges Thereunder.**—No county clerk shall make any charge against the county for fuel or lights for his office, or for stationery, except record books and stationery furnished by him for courts held in the county, and no charge shall be made by any county clerk or register for filing and docketing the transcript of a judgment entered in any other office in this State.

Id., § 6.

**§ 649. Procuring Duplicate County Seals.**—In all the counties of this State having two shire towns, the board of supervisors in said county shall procure a duplicate of the seal of such county, which shall be kept at the shire town where the county clerk's office is not situated, at some safe place to be designated by said county clerk, and may be used by him the same as if at his office.

Laws of 1881, chap. 302; 2 R. S. 964.

**§ 650. 2. County Treasurer — Bonds of County Treasurer.—**Treasurer to Give Bond to Supervisors.—Every person appointed or elected to the office of county treasurer, before he enters upon the duties of his office, shall give a bond to the supervisors of the county, with three or more sufficient sureties, to be approved by the board of supervisors, and in such sums as they shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay over, according to law, all moneys which shall have come, or which shall thereafter come, to his hands as treasurer, and render a just and true account thereof to the board of supervisors when thereunto required. Whenever, in the opinion of said board or a majority of them, the moneys intrusted to such person as treasurer shall be deemed unsafe, or the surety insufficient, such board may require from said treasurer a new and further bond with like conditions as aforesaid, and in such penalty and with such surety as such board shall deem requisite and proper; and in case said county treasurer shall fail to renew said bond, as required, within twenty days after he shall be notified by said board of such requirement, such omissions shall work a forfeiture of his office, and the same shall become vacant. Every person appointed or elected to the office of county treasurer, within twenty days from the time he shall receive notice of his election or appointment, and before he enters upon the duties of his office, shall, in addition to the bond hereinbefore mentioned, to be given to the supervisors of the county, give a bond to the people of the State of New York, with two or more sureties, to be approved by the comptroller, in such penalty as the comptroller shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay over to the State treasury, according to law, all moneys belonging to the State which shall have come, or which shall thereafter come, into his hands as county treasurer, and render a just and true account thereof to the comptroller of the State, which bond shall be filed with the comptroller. At any time, when, in the opinion of the comptroller, the moneys intrusted to such person as treasurer shall be deemed unsafe or the surety insufficient, the comptroller may require a new and further bond, with like conditions as the first, and in such penalty and with such sureties as the comptroller may deem requisite and proper. Should default be made in the giving and filing of the bond to the people of this State, as herein provided for, within the time limited herein, or should the said county treasurer neglect to renew his bond, as last hereinbefore provided

for, the comptroller shall cause a written notice to be served on the person so in default, requiring him to furnish such bond or such renewal, as the case may be, within ten days from the day of the service of such notice, whereupon, if such treasurer shall still be in default, he shall be deemed to have vacated his office, and the governor shall appoint a proper person to fill such vacancy.

2 R. S. 952, as amended by Laws of 1874, chap. 502.

**§ 651. To be Approved by the Board.**—Such bond, with the approbation of the board of supervisors indorsed thereon by their clerk, shall be filed in the office of the county clerk.

2 R. S. 953, § 19.

But in those counties where the annual meeting is held before the annual election, the board are to fix the penalty of the bond of the treasurer at their next annual meeting after the election of such treasurer, and the sureties may be approved by the county clerk and chairman of the board in the recess of the board of supervisors.

Laws of 1850, chap. 346; 2 R. S. 955.

A bond conditioned to “render a just and true account to the board of supervisors, or to the comptroller of the State when thereunto required,” is valid, the interpolated words being surplusage.

Supervisors v. Pindar, 3 Lans. 8.

**§ 652. Bonds to be Given for Sinking Fund Created to Pay Town Debt for Railroad Aid.**

—By Laws of 1869, chapter 907, all taxes, except school and road taxes, collected for thirty years, or so much thereof as may be necessary in any town, village or city, on the assessed valuation of any railroad therein, for which said town, village or city has issued, or shall issue bonds, to aid in the construction of said railroad, shall be paid to the county treasurer in which said town, city or village lies. The county treasurer therewith was to purchase said town bonds when the same could be purchased at or below par; the bonds so purchased to be immediately canceled by said treasurer and county judge, and deposited with the board of supervisors. If such purchase could not be made at or below par, he was required to invest the funds and interest in State, city, county, town or village bonds duly issued, to be held as a sinking fund for the redemption and payment of said railroad debt. The county treasurer was required, in counties in which one or more towns had issued bonds for railroad purposes, to execute a bond, with two sufficient sureties, to be approved by the county judge, to the people of the State of New

York, in such penal sum as may be prescribed by the board of supervisors, conditioned for the faithful performance of the duties devolving upon him under this act.

Laws of 1869, chap. 907, as amended by Laws of 1871, chaps. 283, 925 · 1 R. S. 873.

**§ 653. Suit on Bond.**—Whenever the condition of the county treasurer's bond shall be forfeited to the knowledge of the board of supervisors of the county, and whenever such board shall be required so to do by the comptroller, they shall cause such bond to be put in suit.

2 R. S. 954, § 27.

**§ 654. Disposition of Moneys Recovered.**—All moneys recovered in any such action shall be applied by the board of supervisors to the use of the county, unless the same or some part thereof shall have been received by the county treasurer for the use of the State; in which case, such moneys, or such part thereof as shall have been so received, shall be paid by the supervisors to the treasurer of the State.

Id., § 28.

**§ 655. Banks of Deposit Designated by County Treasurer to Give Bonds.**—By Laws of 1877, chapter 436, the county treasurer, except in New York county, within twenty days after he shall have entered upon the duties of his office, was required to designate one or more good and solvent banks, etc., for the deposit of all moneys received by him and to agree upon a rate of interest per annum to be paid on moneys so deposited, which accrued interest, as often as once in six months, was to be credited in such account *for the use of said county*. The treasurer was required to deposit, at least once a week and in counties containing a city having more than ten thousand inhabitants, daily, all such moneys so received by him. In counties having a city containing more than twenty thousand inhabitants, such bank must have an unimpaired capital stock of at least \$100,000.

2 R. S. 957.

§ 2. Each bank, banker or banking association so designated shall, for the benefit and security of the country, and before receiving any such deposits, give to the supervisors of such county a good and sufficient bond, with two or more sureties to be approved by the county judge of the county in which such bank, banker or banking association shall be located, and the chairman of the board of supervisors of the county of which such treasurer is an officer, and by such treasurer. Such bond shall specify the amount which such treasurer shall be authorized to have on deposit at any one time with such depository, and shall be in a penal sum of twice such amount, and shall be conditioned for the safe-keeping and payment on the order or warrant of such treasurer, or upon other lawful authority, of such deposits and of the agreed interest thereon, and for the pay-

ment of such bonds or coupons as by their terms are made payable at a bank or banks, and for the payment of which a deposit shall be made by such treasurer with such depository. And it shall be the duty of the clerk of the board of supervisors to file such bond in the office of the clerk of such county. The board of supervisors of the county of Queens may, however, authorize the treasurer of said county of Queens to dispense with the bond required under this section when said treasurer shall not be able to obtain such bond.

Nothing herein contained shall apply to the counties of Sullivan, Putnam, Greene, Monroe, Onondaga, Columbia, Seneca, Essex, Delaware, Cortland, Madison, Oswego, Rensselaer and Herkimer.

*Id.*, as amended by the Laws of 1886, chap. 673.

### § 656. Pay of County Treasurer, when Fixed.

— Every county treasurer hereafter elected or appointed shall receive as compensation for his services an annual salary, to be fixed by the board of supervisors. He shall not receive to his use any interest, fees or other compensation for his services, except in proceedings for the sale of lands for unpaid taxes as may be now provided for by law. It shall be the duty of said board to fix the salary of any treasurer hereafter elected, at least six months before his election, and such salary shall not be increased nor diminished during his term of office, and no county treasurer shall purchase or be directly or indirectly interested in any purchase of any claim whatever against the county of which he is the treasurer.

Laws of 1877, chap. 436, § 5; 2 R. S. 958.

The board of supervisors of any county may authorize the employment, by the treasurer, of such clerk or clerks and other assistants as may be deemed necessary by such board; the compensation to be determined by such board.

*Id.*, § 6.

Nothing in this act shall be construed as preventing the treasurers of the several counties of this State, in which the treasurer is a salaried officer, from retaining for the benefit of their said counties, respectively, the same compensation for receiving and paying the money belonging to the State every year, as that now allowed by law where such treasurer is not a salaried officer, and the comptroller is hereby authorized to allow to the said treasurers, for the benefit of their respective counties, on State taxes hereafter received and paid over by them, where not already allowed, the compensation now allowed by law, where such treasurer is not a salaried officer.

*Id.*, § 10, as amended by Laws of 1880, chap. 233.

This act does *not* apply to the counties of Sullivan, Putnam, Greene, Monroe, Onondaga, Columbia, Seneca, Essex, Delaware, Cortland, Madison, Oswego, Rensselaer and Herkimer.

*Id.*, § 11, as amended by Laws of 1886, chap. 673. See Laws of 1846, chap. 189, as amended by Laws of 1871, chap. 110, *post*.

The several county treasurers of this State shall hereafter receive for their services, instead of the fees now allowed by law, such compensation as shall be fixed by the respective boards of supervisors of their respective counties, not exceeding the one-half of one per cent for receiving and the half of one per cent for disbursing all moneys belonging to their said counties respectively. In addition to such compensation so fixed as aforesaid, they shall be entitled to retain a commission of one per centum on every dollar belonging to the State, which they shall receive and pay over, to-wit: one-half of one per centum for receiving and one-half of one per centum for disbursing, but in no case to exceed the sum of \$500. This act shall not apply to the counties of New York, Kings, Albany, Otsego, Onondaga, Erie and Westchester.

Laws of 1846, chap. 189, as amended by Laws of 1871, chap. 110; 3 R. S. 2465.

There are various local acts on this subject.

### § 657. Other Decisions.

County treasurers, since they have become salaried officers, are not entitled to exact, for their own use, fees or commissions for receiving and paying out moneys passing through their hands in the course of legal proceedings.

But they must demand and receive the commissions provided by law, and apply them to the use of the county.

*In re* N. Y. C. & H. R. R. R., 7 Abb. N. C. 408.

In Monroe and Seneca counties and the other counties excepted, chapter 605, Laws of 1875, relating to county treasurers in Monroe and Seneca counties, as amended by chapter 213, Laws of 1879, was not intended to and did not deprive the county treasurers of those counties, of the amount they were entitled to receive for the collection and payment of the State taxes as fixed by chapter 110, Laws of 1871, but such commissions belong to the county.

*Supervisors v. Allen*, 99 N. Y. 532.

See other counties under same exception, *ante*, "Pay of County Treasurers, when Fixed."

The county treasurer has no authority to determine what sum is applicable for investment as a sinking fund, under chapter 907, Laws of 1869, and amendments. That sum must be fixed before the money is paid over to him.

*Clark v. Sheldon*, 20 N. Y. Week. Dig. 275.

### Interest Moneys.

A county treasurer is liable to the county for interest received on deposits of county funds.

### § 658. Board of Supervisors Passing on Account of County Treasurers.

In passing on the annual accounts of county treasurers, boards of supervisors do not act judicially, and have no power to sanction their withholding any moneys



of the county, or to discharge them from liability therefor, nor will the acts or omissions of the supervisors in respect to such liability discharge the sureties.

Supervisors v. Wandel, 6 Lans. 33.

The board of supervisors have no power to direct the county treasurer not to pay, out of the poor funds, any draft drawn by the superintendent of the poor to their own order or to the order of either of them, nor to direct him not to pay any draft, unless the object for which the money is to be paid be specified therein.

People, *ex rel.* Severn, v. Demarest, 16 Hun, 123.

**May Fill Vacancy in Office of County Treasurer.**—Any vacancy happening in the office of county treasurer shall be filled by appointment by the board of supervisors until the 1st of January succeeding the next general election thereafter.

Laws of 1848, chap. 136; 2 R. S. 955.

## § 659. Seal of County Treasurer.

SECTION 1. The board of supervisors of any county in this State is hereby authorized to provide an official seal to be used by the county treasurer.

§ 2. When any such seal shall be so provided, the treasurer shall file an impression therefrom in the clerk's office of such county, certifying that said impression is from the seal so provided; and the said seal shall thereafter be the seal of such treasurer and his successors in office, and shall be used in attesting all papers issued by him requiring any seal thereon.

§ 3. This act shall take effect immediately.

Laws of 1885, chap. 140.

## § 660. Removal of County Treasurer.

The governor may remove any county treasurer from office whenever it shall appear that such treasurer has been guilty of any malfeasance or other misconduct, or malversation in office, first giving to such officer a copy of the charges against him, or by leaving the same at his last place of residence, with some person of suitable age and discretion, and an opportunity of being heard in his defense. In case of any such removal, or of any other vacancy in the office of county treasurer, the vacancy shall be supplied by the board of supervisors, and the person so appointed shall hold the office until his successor shall have been elected at the first annual election occurring after such vacancy, and shall have duly qualified.

Laws of 1877, chap. 436, § 9; 2 R. S. 958.

Nothing herein contained shall apply to the counties of Sullivan, Putnam, Green, Monroe, Onondaga, Columbia, Seneca, Essex, Delaware, Cortland, Madison, Oswego, Rensselaer and Herkimer.

Laws of 1882, chap. 304, § 11.

**§ 661. Account and Report of County Treasurer.**—At the annual meeting of the board of supervisors, or at such other time as they shall direct, the county treasurer shall exhibit to them all his books and accounts, and all vouchers relating to the same, to be audited and allowed.

2 R. S. 954, § 23.

Upon the death, resignation, or removal from office of any county treasurer, all the books and papers belonging to his office, and all moneys in his hands by virtue of his office, shall be delivered to his successor in office, upon the oath of the preceding county treasurer, or, in case of his death, upon the oath of his executors or administrators.

Id., § 24.

If any such preceding county treasurer, or in case of his death, if his executors or administrators, shall refuse or neglect to deliver such books, papers and moneys upon oath, when lawfully demanded, every such person shall forfeit, for the use of the county, the sum of \$1,250,

Id., § 25, as amended by Laws of 1879, chap. 447.

and his successor shall be required to sue therefor.

**§ 662. Duties Relative to Surrogate—May Authorize Surrogate to Appoint a Clerk.**—Each surrogate may appoint, and at pleasure remove, as many clerks for his office, to be paid by the county, as the board of supervisors of his county authorize him so to appoint. The board of supervisors must fix the compensation of the clerk or clerks so appointed; and may authorize them, or either of them, to receive, for their or his own use, the legal fees for making copies of any record or paper in the office of the surrogate. A surrogate may appoint, and at pleasure remove, as many additional clerks, to be paid by him, as he thinks proper.

Code of Civil Procedure, § 2508.

**§ 663. Examiner of Guardians' Accounts.**

The surrogate is required in February of each year to examine, or cause to be examined, all inventories and accounts of guardians filed since February first of the preceding year. When the surrogate seasonably certifies in writing to the board of supervisors, or in New York county, to the board of aldermen, that the examination required by this section cannot be made by him, or the clerk of the surrogate's court, or by any clerk employed in his office and paid by the county, the board must provide for the compensation of a suitable person to make the examination.

Id., § 2844.

**§ 664. Local Officers to Discharge Duties of Surrogate and County Judges.**—The legislature may, on the application of the board of supervisors, provide for the elec-

tion of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate, in case of their inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

Const., art. 6, § 16.

**§ 665. County Judge to be Surrogate.**—The county judge shall also be surrogate of his county; but in counties having a population exceeding forty thousand the *legislature* may provide for the election of a separate officer to be surrogate, whose term of office shall be the same as that of the county judge.

Id., § 15.

**§ 666. May Provide for Election of Surrogates.**—In all cases where any county (except New York and Kings) shall have a population exceeding forty thousand, the board of supervisors therein, at any meeting of such board, special or regular, called in the usual form, may, by resolution thereof, provide for the election, at the following general election, of an officer other than the county judge, who shall perform the duties of surrogate therein.

Laws of 1871, chap. 859, § 3; 1 R. S. 413.

Such resolution shall be immediately delivered by the clerk of the board of supervisors to the county clerk, whose duty it shall be to file the same in his office, and keep the same, as part of the records thereof. A certified copy of such resolution is also to be filed and kept in the office of the secretary of State.

Id., § 4.

**Resolutions as to Vacancies in Offices of County Judge and Surrogate, and Abolishing Office of Surrogate.**—Whenever the office of county judge shall be vacant in a county having a population exceeding forty thousand, the board of supervisors of that county, if there be a separate officer to perform the duties of the office of surrogate in said county, may resolve that there shall be no such officer in said county; and thereupon the office of such officer shall be deemed vacant and abolished from the time the office of county judge shall be filled; and if there be no such officer, such board may resolve that there shall be such officer in such county; in which case such officer shall be elected at the time and in the manner, in all respects, that the county judge in said county shall be elected.

Id., § 6; 1 R. S. 413, 414.

The salary of the county judge is to be fixed by the legislature.

Healy v. Dudley, 5 Lans. 115.

So is that of the surrogate.

Spring v. Wait, 22 Hun, 442.

Section 15 of the new judiciary article (article 6) of the Constitution, in providing that the salaries of county judges "shall be established by law," confines the power of fixing such salaries to the legislature.

And *held*, that the statute conferring power on boards of supervisors to establish such salaries is unconstitutional and void.

Heyley v. Dudley, 5 Lans. 115.

**§ 667. Court-Room, Furniture, Etc.**—Except where other provision is made therefor by law the board of supervisors *must* provide each court of record, appointed to be held therein, with proper and convenient rooms and furniture, together with attendants, fuel, lights and stationery, suitable and sufficient for the transaction of its business. If the supervisors neglect so to do, the court may order the sheriff to make the requisite provision; and the expense incurred by him in carrying the order into effect, when certified by the court, is a county charge.

Code of Civil Procedure, § 31.

The board of supervisors of M. county provided a proper and convenient room and furniture for the use of the surrogate at F., and refused to provide one at A., when requested so to do by the surrogate. Thereupon the latter made an order establishing the office at A., and directed the sheriff to furnish a suitable office and furniture therefor at A. Upon an application to compel the board to pay the rent and expenses thereby incurred, *held*, that as the board had provided a proper office and furniture therefor, it could not be compelled to pay for any other.

People, *ex rel*, Westbrook, v. Supervisors, 34 Hun, 599.

**§ 668. Surrogate's Court — Examination of.** By Laws of 1884, chapter 350, the supreme court, at general term, was required to appoint some suitable and proper person to examine the books, accounts and vouchers of the surrogate's court in each county, relating to money and securities on deposit in such courts belonging to estates and other persons.

**§ 669. Expense Therefor a County Charge.**—The expenses and compensation therefor, as allowed by said court, are to be paid by the county treasurer.

Laws of 1884, chap. 350, § 3.

**§ 670. Sheriff, Jails, Etc. — Custody of Jails.**—The sheriff of the city and county of New York shall have the custody of the jail in that city, used for the confinement of persons committed on civil process only, and of the prisoners in the same; and the sheriff of every other city and county of this State shall

have the custody of the jails and of the prisons thereof, and the prisoners in the same. And the sheriffs respectively may appoint keepers of such jails and prisons, for whose acts they shall severally be responsible.

2 R. S. 967, § 75.

**§ 671. Services for the State.**—Whenever a sheriff shall be required by any statutory provision to perform any service in behalf of the people of this State, and for their benefit, *which shall not be made chargeable by law to his county*, or to some officer or person, his account for such services shall be audited by the comptroller and be paid out of the treasury.

Id., § 76.

### **§ 672. County Charges, Accounts, Etc**

See *ante*, “County Charges,” and *post*, “Fees.”

### **§ 673. Maintenance of Prisoners.**

See Laws of 1875, chap. 251, of Laws herein.

**§ 674. Jails.**—The building and repairing of the county jails are under the control of the board of supervisors, who are to cause to be levied, collected and paid, all such sums of money as *they shall deem necessary* therefor.

See *ante*, “General Statutes pertaining to their Powers and Duties.”

**§ 675. Solitary Cells.**—They shall also cause to be prepared within the jails of their respective counties, or elsewhere, at the expense of such counties, so many solitary cells for the reception of convicts who may be sentenced to punishment therein as the court of common pleas of the county may direct.

2 R. S. 927, § 14.

**§ 676. Disinfectants for Jails.**—The board of supervisors of the several counties in this State, for the penitentiaries and jails under their charge, are hereby authorized and directed to cause to be purchased disinfectants and the means of applying the same, at an expense not greater than the equivalent of one cent per day for the time the same may be used, for each and every cell in each and every prison, penitentiary and jail under their respective charge, and direct the application of the said disinfectants as often as, in the opinion of the physicians of the several prisons, penitentiaries and jails, respectively, the same may be deemed requisite.

Laws of 1868, chap. 599; 3 R. S. 2640.

### § 677. To Contain a Sufficient Number of Rooms.—

Each county prison shall contain :

1. A *sufficient* number of rooms for the confinement of persons committed on criminal process and detained for trial, *separate and distinct from prisoners under sentence*.

2. A *sufficient* number of rooms for the *confinement* of prisoners under sentence.

3. A *sufficient* number of *rooms* for the *separate* confinement of persons committed on civil process, for contempt or as witnesses.

3 R. S. 2589, § 2.

**§ 678. Certain Prisoners to be Kept in Separate Rooms.**—Prisoners committed on criminal process and detained for trial, and persons committed for contempts, or upon civil process, shall be kept in rooms *separate* and *distinct* from those in which persons convicted and under sentence shall be confined, and *on no pretense whatever*, shall prisoners be detained for trial, or persons committed for contempt, or upon civil process, be kept or put in the same room with convicts under sentence.

Id., § 4.

*Male and female prisoners* (except husband and wife) shall not be kept or put in the same room.

Id., § 5.

**§ 679. To be Employed at Hard Labor.**—It shall be the duty of the keeper of each county prison to cause each prisoner under sentence, except such as are under sentence of death, to be constantly employed at hard labor when practicable, during every day except Sunday, and it shall be the duty of the county judge, or the inspectors appointed by him, to prescribe the kind of labor at which such prisoner shall be employed, and the keeper shall account, at least annually, with the board of supervisors of the county, for the proceeds of such labor.

Id., § 9; see Laws of 1884, chap. 21.

**Convicts May be Employed on Highways, Etc.**—The keepers of said prison shall, respectively, have power, with the consent of the supervisors of the county, from time to time, to cause such of the convicts under their charge, as are capable of hard labor, to be employed upon any of the public avenues, highways, streets or other works, in the county in which such prisoners shall be confined, or in any of the adjoining counties,

upon such terms as may be agreed upon between said keepers and the officers or other persons under whose direction such convicts shall be placed.

Id., § 10. But see Laws of 1884, chap. 21.

**§ 680. Houses of Detention.**—The Laws of 1875, chapter 464, also provide :

“SECTION 1. The boards of supervisors of each of the counties in this State, except in the county of Kings and city and county of New York, are hereby authorized and empowered to procure, by lease or purchase, a suitable place or places other than common jails, for the safe and proper keeping, and care and keep of women and children charged with offenses and held for trial, and all persons detained as witnesses; such places to be termed houses of detention.”

3 R. S. 2542.

The sheriff is to have charge and control thereof, and entitled to collect from the county the same fees and compensation for care and board of said persons as are now allowed by law for the care and board of prisoners confined in the common jail.

Id., § 4.

**§ 681. Penitentiaries—Agreement for Keeping Prisoners in Penitentiary.**—It shall be lawful for the several boards of supervisors in the several counties of this State, to enter into an agreement with the board of supervisors of any county having a penitentiary therein, or with any person in their behalf, by them appointed, to receive and keep in the said penitentiary any person or persons who may be sentenced to confinement therein, by any court or magistrate, in any of the said several counties in the State, for any term not less than sixty days. Whenever such agreement shall have been made, it shall be the duty of the said several boards of supervisors of the several counties afore-said to give public notice thereof, specifying in such notice the period of the continuance of such agreement, which said notice shall be published in such newspapers, printed in said several counties, not less than two and for such period of time not less than four weeks, as the several boards of supervisors of said several counties shall direct.

Laws of 1859, chap. 289, as amended by Laws of 1874, chap. 209; 3 R. S. 2632.

It was made the duty of courts, police justices, justices of the peace, or other magistrates, to sentence prisoners for any crime or misdemeanor, not punishable by imprisonment in the State prison, to such penitentiary.

Id., § 2.

Sheriffs, deputy sheriffs, constables or policemen were directed to convey such prisoners to such penitentiary.

*Held*, that the act of 1874 (Laws of 1874, chap. 209) is constitutional and valid which authorizes boards of supervisors to agree with any county having a penitentiary therein, to receive into and keep any person sentenced to confinement for a term not less than sixty days, and making it the duty of every court, in a county so agreeing, to sentence to such penitentiary any person convicted of an offense not punishable with imprisonment in a State prison, who is sentenced for a term not less than that specified.

*Brown v. The People*, 75 N. Y. 437.

**§ 681 A. Expenses a County Charge, Supervisors to Prescribe Fees, etc.**—The officers thus conveying such convicts so sentenced shall be paid such fees and expenses therefor as the several boards of supervisors of the several counties of this State shall prescribe and allow.

*Id.*, as amended by Laws of 1876, chap. 108.

**§ 681 B. Expenses, when a State Charge.**  
Whenever any person shall be convicted of an offense punishable with imprisonment in the State prison, in either of the judicial districts of the State having a county penitentiary within said judicial district, and such person so convicted shall be sentenced to imprisonment for a term not exceeding three years, the court before which such conviction shall be had may, in its discretion, sentence the prisoner so convicted to be imprisoned in the county penitentiary situated within that judicial district instead of a State prison.

Laws of 1875, chap. 571; 3 R. S. 2644.

The expenses of removing such convict to and maintaining at said penitentiary are a State charge.

*Id.*, § 2.

A similar law exists for female convicts convicted of crimes punishable by imprisonment in a State prison.

Laws of 1877, chap. 172; 3 R. S. 2646.

**§ 682. Jail Physicians.**—The board of supervisors of each county, except New York, must appoint some reputable physician, duly authorized to practice medicine, as the physician to the jail of the county. If there is more than one jail they must appoint a physician to each. He holds his office at the pleasure of the board, except in Kings county where his term of office is three years.

Code of Civ. Pro., § 126.



§ 683. **To Appoint County Sealer.**—The board of supervisors of each county shall, at their annual meeting, appoint a county sealer of weights and measures, who shall hold his office during the pleasure of the board.

2 R. S. 1848, § 20.

§ 684. **Duties Relative to Roads and Bridges.**—Some of the following requirements of the law in relation to roads and bridges, give the board of supervisors no discretionary powers in the matter. The amount to be raised is determined by other means, viz.:

**1. By the Commissioners of Highways.**—The statement furnished by the highway commissioner to the supervisor of the town fixes the amount to be raised by tax on the town, whatever amount the commissioners determine to be necessary, not exceeding \$250, *must* be so raised.

2 R. S. 1214, § 4; Hill v. Supervisors, 12 N. Y. 58; Lament v. Haight, 44 How. 3.

**2. Highway Commissioner's Statement as to Bridges over Boundary Streams or Waters.**—Each county is liable for at least one-sixth of the expense for the construction, care, maintenance, preservation and repair of public bridges lawfully constructed over streams or other waters forming its boundary line.

The highway commissioner is required to present a sworn statement, in writing, on or before November first of each year, containing a description of said bridges, the whole expense in items incurred by his town during the year preceding for such construction, care, maintenance, preservation and repair.

The board of supervisors is required to levy upon the county at least one-sixth of such expense, to be paid to such commissioner.

They *may, in their discretion*, levy a larger amount on the county therefor, not to exceed one-fourth thereof, if they consider it equitable and just for the county to bear a larger proportion than one-sixth; but the whole amount so levied for such purpose in any one year shall not exceed \$5,000, nor shall this act apply to any such expense heretofore contracted.

Laws of 1883, chap. 346.

This does not apply to bridges between Westchester and New York counties.

Id.

**3. The Amounts Duly Voted to be Raised by Town Meetings.**—On presentation of such proceedings at

town meeting, duly certified by the town clerk, the board *must* levy a tax upon the town therefor.

2 R. S. 1216, 1218.

**4. Where Bridges are Destroyed after Town Meeting, by the Elements or Otherwise.**—Where the town officers have duly acted in such cases, the amounts therefor will have been duly audited by the town board of auditors, and presented to the board of supervisors, as other town charges, and *must* also be levied.

Laws of 1858, chap. 103; 2 R. S. 1218.

**§ 685. 5. Board to Audit Damages on Laying out-Road**—All damages which may be finally assessed or agreed upon by commissioners of highways for the laying out of any road except private roads, shall be laid before the board of supervisors by the supervisor of the town to be audited with the charges of the commissioners, justices, surveyors or other persons or officers employed in making the assessment, and for whose services the town shall be liable, and the amount shall be levied and collected in the town in which the road is located, and the money so collected shall be paid to the commissioners of such town, who shall pay to the owner the sum assessed to him, and appropriate the residue to satisfy the charges aforesaid.

Laws of 1847, chap. 455, § 23; 1 R. S. 851.

The award of damages by the commissioners or jury is conclusive on the board of supervisors, and cannot be revised by them; but they must cause it to be raised by tax.

People v. Supervisors of St. Lawrence, 5 Cow 292.

**§ 686. Supervisors, how Compelled to Audit Damages.**—Should the board of supervisors refuse or neglect to audit the damages so assessed, they may be compelled to do so by *mandamus*.

People v. Supervisors of Ulster, 3 Barb. 336, and cases cited; People, *ex rel.* Aspinwall, v. Supervisors, 20 N. Y. 252.

If the supervisor make a false return to a *mandamus*, sued out by an individual, whose land is taken for a highway, and the relator has been kept out of the damages to which he was entitled from the town, the supervisors may properly be made liable in damages, to the extent of the interest upon the damages assessed.

People, *ex rel.* Aspinwall, v. Supervisors of Richmond, 28 N. Y. 112.

Where, upon application for a peremptory *mandamus*, in such a case, the material issues are found in favor of the plaintiff, the judgment should be that a peremptory *mandamus* issue to the board of supervisors, commanding them to audit

the claim, as commanded in the alternative writ. A direction to the jury to render a verdict for the relator for the amount of the damages assessed, and the interest thereon as damages, is erroneous.

Id.

But on appeal to the court of appeals, from such a judgment, the facts being before the court, it may modify the judgment, by reversing it as to the sum assessed as damages, and affirming it as to the interest allowed as damages, and directing that the judgment be so amended as to grant to the relator the writ of *mandamus*, without delay.

Id.

A board of supervisors can only audit the damages assessed for the land of an individual, taken for a highway, with the charges, etc., as provided in the highway act

Laws of 1847, chap. 455, § 23.

and no more can be levied and collected of the town.

Id.

Where damages, occasioned by the laying out of a highway, had been re-assessed by a jury under the act of 1847 (chap. 455), at a larger sum than the original assessment, and the supervisor of the town refused to present the same to the board of supervisors of the county, as required by section 23 of that act, but instead thereof presented the original assessment, he deeming the clause as to re-assessment unconstitutional; it was *held* that he was liable to an action at the suit of the party entitled to the damages as re-assessed. *Held*, also, that the remedy by *mandamus* was not proper in such a case.

Clark v. Miller, 54 N. Y. 528.

The provisions of the act of 1847, chapter 455, relative to the assessment of damages occasioned by the laying out of a highway, by commissioners, and for a re-assessment by a jury, in case a party aggrieved shall apply for the same, are not in conflict with article 1, section 7, of the Constitution, and are valid.

Id.

## § 687. 6. Bridges Between Adjoining Towns.

Adjoining towns are required to maintain, at the joint expense of the towns, the bridges between them, and for the purpose of building and maintaining them the commissioners of such towns are authorized to enter into a joint contract for the purpose. If the commissioners of either town, after proper notice, do not enter into such contract, nor proceed to build or maintain the bridge, the commissioners of the other town may proceed to have the work done, and sue the defaulting commissioners for their proportion.

Laws of 1841, chap. 225, as amended by the Laws of 1857, chap. 383; 2 R. S. 1259-1260; see Laws of 1883, chap. 346.

The board of supervisors of the county shall proceed to levy the amount of any judgment so obtained, with costs and interest, on the taxable property of the town, the commissioners of which made the default.

Id.

The statute of 1857 (chap. 639) provides a system for compelling commissioners to erect and repair bridges between adjoining towns. It is provided, that, after the bridge shall have been constructed, the commissioners of highways in each town shall make a full report of their proceedings in the premises, to the auditors of town accounts, at the time of making their annual report. The said commissioners for each town shall attach to the copy of the said order granted by the supreme court or a judge thereof, an accurate account, under oath, of what has been done in the premises and deliver the same to the supervisors of each town. The board of supervisors at their annual meeting shall levy a tax upon each of such towns when in the same county, and upon the appropriate towns when in different counties, for its share of the costs of building, rebuilding or repairing such bridge, after deducting all payments actually made by said commissioners thereon; which tax, including prior payments, shall in no case exceed the amount specified in the order of the court ordering the erection or repair to be done.

**§ 688. Proceeding when Bridge has been Repaired by Individuals.**—Whenever any such bridge shall have been or shall be so out of repair as to render it unsafe for travelers to pass over the same, or whenever such bridge shall have fallen down, or been swept away by a freshet or otherwise, if the commissioners of highways of such adjoining towns, after reasonable notice of such condition of such bridge, have neglected or refused, or shall neglect or refuse to repair or rebuild such bridge, then and in such case, whatever funds have been or shall be necessarily or reasonably laid out or expended in repairing such bridge, or in rebuilding the same, by any person or persons or by any corporation, shall be a charge upon such adjoining towns, each being liable for its just proportion; and the person or persons, or corporation, who has made such expenditure, or shall make the same, may apply to the supreme court at a special term, or to a judge at chambers, for an order requiring such towns severally to re-imburse such expenditures, which application shall be made upon serving papers for such application upon the commissioners of highways in each of such towns, at least eight days before such application shall be made, and such court or judge is authorized to grant an order requiring each of such adjoining towns to pay its just proportion of such expenditure, specifying the same; and in case such order shall be granted, it shall be the duty of the commissioners of highways in each of such towns, forthwith to serve a copy of such order upon the supervisor of each of such towns, who shall present the same to the board of supervisors at their next annual meeting. The board of supervisors shall raise the amount justly chargeable upon each town, and cause the same to be collected and paid to such person or persons, or corporation, as incurred such expenditure. The right of appeal is given to such party under this section, provided for under the sixth section of this act.

**§ 689. 7. Discretionary Powers.—Of the Erection and Repair of Bridges.**—Whenever it shall appear to the board of supervisors of any county that any one of the towns in such county would be unreasonably burdened by erecting or repairing any necessary bridge or bridges in such town, such board of supervisors shall cause such sum of money to be raised and levied upon the county, as will be sufficient to defray the expenses of erecting or repairing such bridge or bridges, or such part of such expenses as they may deem proper; and such moneys, when collected, shall be paid to the commissioners of highways of the town in which the same are to be expended.

2 R. S. 1258, § 119.

In case the commissioners of highways of any town shall be dissatisfied with the determination of the board of supervisors of their county, touching an allowance for any such bridges, such determination shall, on the application of the commissioners, be reviewed by the court of sessions of the same county, whose order in the premises shall be observed by every such board of supervisors.

Id., § 121.

Notice of the application should be served upon the chairman of the board of supervisors, or in case there is none, or he is absent, on the clerk of the board. Although no time is prescribed, it is proper that the notice should be served at least ten days before the application.

This act by section 120 thereof limited the amount to be raised by the county in any one year at not exceeding \$1,000.

In *Hill v. Supervisors*, the court of appeals says:

The act of 1838 (chap. 314, *ante*), gave to the board of supervisors, in addition to the powers which they then possessed, authority

(1) "To cause to be levied, collected and paid to the treasurer of the county such sum of money as might be necessary to construct and repair bridges *therein*, and to prescribe upon what plan and in what manner the moneys so to be raised should be expended; and

(2) To apportion the tax so to be raised among the several towns and wards of their county as shall seem to them to be equitable and just."

The first question to be considered, in respect to this act, is whether the two first subdivisions relate exclusively to bridges which are a charge upon the whole county. Nothing in the language of the act favors such a construction. By its terms, the only limitation of the subject, in respect to which the power is to be exercised, is that the bridges are to be *in the county*.

12 N. Y. 58.

The general purpose of the provisions on this subject, of the act of 1838, was to obviate the evil which had rendered necessary so frequent applications to the legislature, by conferring upon boards of supervisors a further and new discretionary power, from time to time, to aid in the construction and reparation of bridges within their respective counties. This general purpose has been effected by removing the limit of expenditure in any one year, and by enabling the board to

apportion the tax among the several towns and wards as to them shall seem equitable, as well as by intrusting the board with the power of determining what bridges they will construct or repair.

Id. 60. See Laws of 1869, chap. 855, § 2; *People, ex rel. Atkinson, v. Tompkins*, 64 N. Y. 53; *People v. Meach*, 14 Abb. (N. S.) 429. See *Dictum Contra*, 1 Hill. 50.

**§ 690. Highways Through Unimproved Lands.**—The board of supervisors of any county in this State containing more than three hundred thousand acres of unoccupied and unimproved forest lands, in addition to the powers now possessed by said board, is hereby authorized to establish separate highway districts in such county, for the purpose of laying out and constructing highways through such unimproved and unoccupied tracts of land in such county; such highway district to be established only upon the application of the owners of more than one-half of the non-resident lands to be included therein.

Any highway district established under the provisions of this act shall consist of contiguous tracts or parcels of land, and may include within its limits parts of one or more towns, and the same may be changed, altered or abolished at any time by said board of supervisors. The said board of supervisors shall have power to appoint a commissioner or commissioners to lay out and construct highways in any such district, and to prescribe their powers and duties, and may also direct the manner in which highway taxes shall be assessed, levied and collected upon the lands embraced in any such district, and likewise the manner of expenditure thereof. The said board of supervisors may also authorize commissioners appointed under this act to borrow money on such terms as said board shall direct, but not exceeding the estimated amount of ten years' highway taxes upon the lands embraced within the district in which such loan is authorized, and may, for the purpose of repaying any such loan set apart, appropriate the highway taxes upon lands in any such district for a period not exceeding ten years from the time of making such loan.

Laws of 1880, chap. 175.

**§ 691. 8 Application to Supervisors for Leave to Erect Bridge.**—By section 6 of chapter 259 of the act of 1848, providing for the incorporation of bridge companies, it is provided that when any bridge corporation shall be desirous of constructing a bridge or any part thereof, in any county, it shall apply to the board of supervisors of such county at the annual or any special meeting thereof, for authority to construct such bridge; of which application, such corporation shall give notice, by publishing

the same in at least one public newspaper in such county, or if no newspaper is published therein, then in an adjoining county, once in each week for six weeks successively, previous to the time of presenting such application to such board, specifying such time and the location of such proposed bridge. If the place of the location of such bridge shall be situated in more than one county, such application shall be made to the board of supervisors of every such county. Such application shall also specify the length and breadth of such bridge; and the notice of such application shall set forth all the particulars required to be specified in such application. Upon the hearing of the said application, all persons residing in such county or interested in such application may appear and be heard in respect thereto. Such board may take testimony in respect to such application, or may authorize it to be taken by a county judge or justice of the peace of such county; and it may adjourn the hearing from time to time. A copy of the articles of association of such corporation, certified by the State engineer and surveyor, or by the clerk where such articles are filed, shall be attached to and filed with such application. No such corporation shall be authorized to bridge any stream, in any manner that will prevent or endanger the passage of any raft of forty-five feet in width, or any ark where the same is navigated by rafts or arks.

If after hearing such application such board shall be of opinion that the public interests will be promoted by the construction of such bridge on the proposed site, it may, if a majority of all the members elected to such board shall assent thereto, by an order to be entered in its minutes, authorize such company to construct such bridge as shall have been specified in the application, which shall be particularly described in such order. Such corporation shall cause a copy of such order certified by the clerk of such board, with a copy of such application, to be recorded in the clerk's office of such county, before it shall proceed to do any act by virtue thereof; and such board shall cause such application when it shall have finally acted on the same, to be filed at the expense of the corporation, with all the other papers relating thereto, or to the proceedings of said board thereon, in the office of the clerk of the county in which it shall have been made. Any corporation formed under this act may use, in such manner as such board shall prescribe, so much of any public highway, on either side of any stream, as may be necessary for the construction and maintenance of such bridge and toll-houses.

**§ 692. 9. Company to Make Application to Supervisors.—Plank Roads and Turnpikes.—**

Whenever any plank road or turnpike company shall be desirous to construct a plank road or turnpike road through any part of any county, it shall make application to the board of supervisors of such county, at any meeting thereof legally held, for authority to lay out and construct such road, and to take the real estate necessary for such purpose; and the application shall set forth the route and character of the proposed road as the same shall have been described in the articles of association filed as aforesaid. Public notice of the application shall be given by the company previous to presenting the same to such board by publishing such notice once in each week for six successive weeks in all the public newspapers printed in such county, or in three of such newspapers, if more than three are published in such county, which notice shall specify the time when such application will be presented to such board, the character of the proposed road, and each town, city and village in or through which it is proposed to construct the same.

Laws of 1847, chap. 210, § 4; 2 R. S. 1827.

**Special Meeting of Supervisors.**—If such company shall desire a special meeting of the board of supervisors for hearing the same, any three members of such board may fix the time of such meeting, and a notice thereof shall be served on each of the other supervisors of the county, by delivering the same to him personally or by leaving it at his place of residence at least twenty days before the day appointed for such meeting. The expenses of such special meeting, and of notifying the members of such board thereof, shall be paid by such company.

Id., § 5.

**Owner of Land may be Heard.**—Upon the hearing of the said application, all persons residing in such county, or owning real estate in any of the towns through which it is proposed to construct such road, may appear and be heard in respect thereto. Such board may take testimony in respect to such application, or may authorize it to be taken by any judicial officer of such county, and it may adjourn the hearing from time to time.

Id., § 6.

**§ 693. Application, When to be Assented To.**

—If, after hearing such application, such board shall be of the opinion that the public interests will be promoted by the construction of such road on the proposed route as shall be described in the



application, it may if a majority of all the members elected to such board shall assent thereto, by an order to be entered in its minutes, authorize such company to construct such a road upon the route specified in the application, and to take the real estate necessary to be used for that purpose, a copy of which order, certified by the clerk of such board, the said company shall cause to be recorded in the clerk's office of such county before it shall proceed to do any act by virtue thereof.

Id., § 7.

#### **§ 694. Commissioners to be Appointed.—**

Whenever any such board shall grant such an application, it shall appoint three disinterested persons who are not the owners of real estate in any town through which such road shall be proposed to be constructed, or in any town adjoining such town, commissioners to lay out such road; the said commissioners, after taking the oath prescribed by the Constitution shall proceed without unnecessary delay to lay out the route of such road in such manner as in their opinion will best promote the public interest; they shall hear all persons interested who shall apply to them to be heard, they may take testimony in relation thereto, they shall cause an accurate survey and description to be made of such route and of the land necessary to be taken by such company for the construction of such road, and the necessary buildings and gates; they shall subscribe such survey and acknowledge its execution, as the execution of deeds is required to be acknowledged in order that they may be recorded, and they shall cause such survey to be recorded in the clerk's office of such county. If such company shall intend to construct its road continuously in or through more than one county, such application shall specify the number of commissioners which the company desire to have appointed to lay out such road, which shall not exceed three for each county, and an equal number of such commissioners shall be appointed by the board of supervisors of each county in or through which it shall be proposed to construct such road; but the whole number of such commissioners shall not be less than three, nor without the consent of such company, shall it exceed six, unless the number of counties in or through which it is proposed to construct such road shall exceed that number. And the commissioners so appointed shall lay out the whole of such road, and shall make out a separate survey of so much thereof as lies in each county, which shall be subscribed and acknowledged as aforesaid, and recorded in the county clerk's office of such county. Such company shall pay each of the

said commissioners \$2 for every day spent by him in the performance of his duties as such commissioner, and his necessary expenses.

*Id.*, § 8.

Any company formed under the provisions of chapter 210 of the Laws of 1847, entitled "An act to provide for the incorporation of companies to construct plank roads, and of companies to construct turnpike roads," may procure, by purchase or gift from the owners thereof, any lands necessary for the construction of so much of its contemplated road as shall be intended to be constructed in any county, and may also procure, by agreement from the officers named in the twenty-sixth section of the said chapter, the right to take and use any part of any public highway necessary for the construction of so much of such road as shall be intended to be constructed in such county, and when any such company shall have so procured all the lands necessary to be used for the construction of its road in such county, and the right to take and use such parts of the public highways in such county as shall be necessary for that purpose, such company may construct so much of its road as shall be intended to be constructed in such county, without making the application mentioned in the fourth section of the said chapter.

Laws of 1847, chap. 398, § 1; 2 R. S. 1338.

But if any portion thereof is located in another county the consent of the board of supervisors of that county is necessary.

**§ 695. Inspectors to be Appointed.**—In each county of this State, in which there shall be any plank road, or turnpike road, constructed by virtue of this act, there shall be three inspectors of such roads who shall not be interested in any plank or turnpike road in such county. They shall be appointed by the board of supervisors of the county, and shall hold their offices during the pleasure of such board. Before entering on their duties such inspectors shall take and subscribe the constitutional oath of office, and file the same in the office of the clerk of the county.

Laws of 1847, chap. 210, § 33; 2 R. S. 1333.

These inspectors are confined to a preliminary inspection of toll roads before the companies are allowed to exact toll thereon. They have no power to act upon complaints for want of repair.

*Suydam v. Smith*, 52 N. Y. 383.

**§ 696. Commissioners of Highways.**—Commissioners of highways seem to be the inspectors of plankroads and turnpikes in their respective towns.

Laws of 1873, chap. 440. But see Laws of 1848, chap. 45.

There are many local acts on this subject.

**§ 697. Charter, how Extended.**—By Laws of 1876, chapter 135, it is provided that any plankroad company or turnpike company, formed under the act of 1847, and which shall have managed and carried on any plankroad or turnpike road for twenty years last past, upon three miles in length thereof, or not less than one-third of the route named in their original articles of association, may, at any time within five years before the termination of its corporate existence, or of the time specified for its duration in its articles of association, continue its corporate existence for a period not exceeding thirty years, by first obtaining the consent, by resolution, of a majority of all the members of the board of supervisors of the county or counties in which such road is located, adopted at any regular or special meeting, etc. The provisions of this act do not apply to the counties of Kings, Yates, Queens, Seneca or St. Lawrence.

As amended by Laws of 1879, chap. 253; 2 R. S. 1353.

Laws of 1879, chapter 441, provide that in any proceedings heretofore taken under the existing provisions of law, or which shall be hereafter so taken, to extend the charter or corporate existence of any plankroad or turnpike company, the filing and recording of a copy of the resolution by which the required consent of a majority of the supervisors of any county shall be given, verified either by the certificate of the clerk of the board of supervisors or an affidavit of some members of the board of supervisors, shall be and be deemed a full compliance with the requisitions of law as to filing and recording such consent.

2 R. S. 1357.

By Laws of 1880, chapter 484, it is provided that whenever, by oversight or mistake, the officers of any plankroad company or turnpike company have neglected to make, file and record in the office of the clerk of the county or counties in which such plankroad or turnpike road is located, within one year before the expiration of the term of the corporate existence of such company, and in the office of the secretary of State, the consent provided for in section 1 of chapter 135 of the Laws of 1876, and a statement showing the actual capital expended in the construction of any such plankroad or turnpike road exclusive of repairs, together with the consent in writing from the persons owning two-thirds of the capital stock of such company, and a statement of the number of years which they shall desire such corporate existence extended, and the name of each town or ward through or into which such road passes, it shall be lawful for such companies to make and file in the office of the secretary of State and in the office of the clerk of the county in which such companies may be situate, a statement showing the actual capital expended in the construction of any such plankroad or turnpike road, exclusive of repairs, together with the written consent of a majority of the supervisors of the county or counties in which said companies are located, and the consent, in writing, of the persons owning two-thirds of the capital stock of such companies, respectively, consenting to their or its corporate existence; then, in such case, the corporate existence of such company or companies is hereby renewed, revived and extended for not more than thirty years, or for less time, as may be specified and stated in such statements and consents, etc. Public notice must be first given by the president or secretary of such company for four weeks by advertisement in the State paper, and in not less than two newspapers published in the county in which such roads are located, of the intention to extend the corporate existence of said plankroad or turnpike company. The provisions of this act do not apply to the counties of Ulster, Herkimer or Otsego.

As amended by Laws of 1881, chap. 117.

**§ 697 A. Abandonment of Road.**—In case any part of any plankroad or turnpike road has been abandoned according to law, any further abandonment of any part of such road shall only be made by and with the consent of a majority of all the members of the board of supervisors of the county in which any such road or any part thereof is located, which consent shall be filed with the clerk of said county or counties.

Laws of 1876, chap. 135, § 2.

The board have power to provide for the use of abandoned turnpike, plank or macadamized roads within any town as public highways.

Laws of 1869, chap. 869, § 2.

**§ 698. 10. Powers of Supervisors as to Toll.**—Such boards of supervisors shall have power, by a vote of two-thirds of all the members elected to such board, to be taken by ayes and nays, to authorize an alteration, reduction or change of the rates of toll charged or received by any turnpike, plank or gravel road, or other toll-road within such county, or by any bridge company or ferry within such county, or, if within more than one county, then by joint action with the supervisors of such counties, provided such alteration shall be asked for by the directors, trustees or owners of such road, bridge or ferry; and provided, further, that no increase of toll shall be so authorized unless notice of intention to apply for such increase shall have been published in each of the newspapers published in such county once in each week for six successive weeks next before the annual election of supervisors in such county; and any alteration in rates of toll authorized by any board of supervisors may be changed or modified by any subsequent board, on their own motion, by a like vote of two-thirds of all the members elected to such board.

Laws of 1869, chap. 855, § 3.

No more toll shall be taken under the act of 1847, chapter 210, than for the number of miles which shall be traveled by the person or persons using such roads, to the end that where diverging roads strike any plankroad or turnpike road, at or near any toll-gate, the toll charged for using said plank or turnpike road shall commence from the point of such divergence, and the toll charged shall be only for the distance traveled on such road; provided, however, that fractions of cents may be made units of cents in favor of said road; provided that the board of supervisors of any county, in which such

plankroad or turnpike may be situate, and for so much thereof as shall lie within said county, shall, by a majority vote, pass a resolution declaring it to be proper that such discrimination shall be made.

Laws of 1876, chap. 435; 2 R. S. 1356.

**§ 699. County Railroads, etc. — Appointment of Railroad Commissioners.**—Laws of 1875, chapter 606, section 1, provides as follows :

“Whenever it shall appear, by the application of fifty reputable householders and tax payers of any county in this State, verified upon oath before a justice of the supreme court, that there is need in such county of a steam railway or railways for the transportation of passengers, mails or freight, the board of supervisors of said county may, within thirty days after presentation to them of such application, duly verified as aforesaid, appoint five commissioners, who shall be residents of the said county, and who shall have full power and authority to do and provide all that they are hereafter directed to do and provide, and a certificate of whose appointment, signed by the chairman and clerk of such board, shall be filed in the office of the secretary of State, and a duplicate thereof in the office of the clerk of such county.”

But these provisions are not applicable to proposed railways wholly in cities, nor to New York, Kings and Westchester counties.

Laws of 1875, chap. 606, as amended by Laws of 1886, chap. 551; 2 R. S. 1614.

**§ 700. For Further General Powers** as to roads and bridges, see Laws of 1869, chapter 855, and Laws of 1875, chapter 482, *ante*.

These acts cover most of the cases that are likely to arise in these matters.

#### DUTIES RELATIVE TO THE SUPPORT OF THE POOR.

##### **§ 701. Supervisors May Erect Poor-House.**

—The board of supervisors of any county in this State in which a county poor-house is not already erected may, at any annual or special meeting thereof, determine to erect such house for the reception of the poor of their county; and upon filing such determination with the clerk of the county they may direct the superintendents of the poor of such county to purchase one or more tracts of land not exceeding two hundred acres and to erect thereon one or more suitable buildings for the purpose aforesaid. To defray the expenses of such purchase and buildings, the said board may raise

by tax on the real and personal estate of the inhabitants of the same county, a sum not exceeding \$7,000, by such installments and at such times as they may judge expedient. The said tax shall be raised, assessed and collected in the same manner as the other county charges, and shall be paid by the county treasurer to the superintendents of the poor of the county, to be applied in defraying the expenses aforesaid.

3 R. S. 1856, § 17.

The board of supervisors have power to purchase, for the use of their county, any real estate necessary to the erection of public buildings and for the support of the poor of such county, and to locate the site of buildings when they are not already located.

Laws of 1849, chap. 194; see, also, Laws of 1875, chap. 482, § 1, subd. 1.

**§ 702. Supervisors to Determine Number of Superintendents.**—It shall be lawful, hereafter, for the board of supervisors in any county at any annual meeting of such board, to direct, by resolution, that thereafter only one county superintendent of the poor shall be elected in and for such county, who shall hold his office for three years, but in all counties where no such resolution shall have been passed, three county superintendents of the poor shall be elected. And after the board of supervisors of any county shall have, by resolution, directed that only one superintendent of the poor shall be elected in and for such county, the said board may, at any annual meeting thereof, revoke such resolution, and may, by resolution, direct that thereafter three superintendents of the poor shall be elected in and for such county. The superintendent of the poor who shall be in office at the time of the adoption of the resolution hereby authorized shall hold his office (subject to all provisions of law) until the expiration of the term of office for which he was elected. If the term of office of such superintendent will expire on the 31st day of December of the same year of the adoption of said resolution, then three superintendents of the poor for said county shall be elected at the next general election, whose term of office, respectively, shall be determined in accordance with the provisions of section 3 of said chapter 498. If the term of office of the superintendent of the poor in office at the time of the adoption of said resolution will not expire during the year of the adoption of said resolution, then, at the general election to be held next thereafter, there shall be elected two superintendents of the poor for said county, and their term of office shall be determined in

accordance with the provisions of the Laws of 1847, chapter 498, section 3, but for such term that the terms of the three superintendents of the poor shall so expire that one of them shall be to be filled at each annual election thereafter. In any county where such resolution has been already adopted, there shall be elected annually thereafter, at the general election in each year, one county superintendent of the poor, who shall hold his office for three years.

Laws of 1847, chap. 498, as amended by Laws of 1862, chap. 298; 3 R. S. 1873.

**§ 703. Who are not Eligible.**—No supervisor is eligible to the office of superintendent of the poor.

Laws of 1853, chap. 80.

A supervisor is not merely ineligible to hold the office of superintendent of the poor, but he is ineligible to an election or appointment thereto.

The People, *ex rel.* Furman, v. Clute, 50 N. Y. 451.

And where the charter of a city provides that supervisors of wards, elected thereunder, shall be subject to all the provisions applicable to supervisors in the towns, a supervisor of a ward of such city is brought within the provisions of the act of 1853, chapter 80, above referred to, and is ineligible to the office of the superintendent of the poor.

*Id.*

**§ 704. Term of Office.**—In counties where only one superintendent of the poor shall be chosen he shall hold his office for three years, but in counties where three are chosen, one of the said superintendents so elected shall hold his office for one year, one for two years and one for three years, and the clerk of the county shall, on the first day of January after such election, determine, by lot, which of said superintendents shall hold his office for one year, which for two, and which for three years, and annually thereafter, there shall be elected one superintendent, who shall hold his office for three years.

*Id.*, § 3.

**§ 705. Vacancies, how Filled.**—Boards of supervisors shall appoint county superintendents of the poor to fill vacancies which may happen in such offices.

*Id.*, § 4.

In *People v. Comstock*, 78 N. Y. 356, this statute was held to be constitutional.

The provision of the State Constitution (art. 10, § 2), declaring that county officers, whose election or appointment is not provided for in the Constitution, shall be elected by the electors, or appointed by the board of supervisors of the county, as the legislature shall direct, includes superintendents of the poor; and the

power conferred upon the legislature embraces the power to fill vacancies in that office.

Under the provisions of the statute of 1854, declaring that in counties wherein the boards of supervisors determine to have but one superintendent of the poor, he shall hold his office for three years, and providing for triennial elections thereto (Laws of 1847, chap. 498), authorizing boards of supervisors to fill vacancies in that office, where a vacancy occurs in a county whose board of supervisors have determined to have but one superintendent, said board may fill the vacancy by appointment for the unexpired term.

People, *ex rel.* Hatfield, v. Comstock, 78 N. Y. 358.

Accordingly *held*, where the superintendent of the poor of Oneida county, who was elected in 1876, was removed by the governor, and defendant was appointed in October, 1878, by the board of supervisors to fill the vacancy, that defendant's term did not expire until January 1, 1880, and that, therefore, the election of re-lator to that office at the annual election in 1878 was unauthorized.

Id. 356.

**§ 706. To Give Bond.**—Every person hereafter elected to the office of superintendent of the poor shall, within ten days after his election, give a bond to the supervisors, with two or more sufficient sureties to be approved by the board of supervisors, and in such sum as they shall direct, conditioned that such person shall faithfully execute the duties of his office, and shall pay according to law all money which shall come to his hands as superintendent of the poor, and render a just and true account thereof to the board of supervisors.

Such bond, with the approbation of the board of supervisors indorsed thereon by their clerk, shall be filed in the office of the county clerk.

Laws of 1848, chap. 327; 3 R. S. 1875.

It shall be the duty of the board of supervisors of the several counties to fix the penalty of the bonds of superintendents of the poor, at their next annual session; and the sureties may be approved by the county clerk in the recess of the board of supervisors.

Laws of 1850, chap. 12.

Superintendents of the poor hereafter to be elected may have until the first day of January next after the election to take the oath of office and file their official bond.

Id.

**§ 707. Powers and Duties of Superintendent.**—They shall be a corporation by the name of the superintendents of the poor of the county for which they shall be appointed, and shall possess the usual powers of a corporation for public purposes; they shall meet as often as the supervisors of the county shall direct, at the county poor-house, if there be one, or at the place of holding courts



in their county, or at one of the places of holding courts, if there be more than one, and at such other times and places as they shall think expedient ; they shall have a general superintendence and care of the county poor who may be in their respective counties ; and shall have power, and it shall be their duty,

1. To provide suitable places for the keeping of such poor, when so directed by the supervisors of any county where houses for that purpose have not been erected by the county ; and for that purpose, to rent a tenement or tenements, and land not exceeding fifty acres, and to cause the poor of the county to be maintained in such places.

2. To establish and ordain prudential rules, regulations and by-laws, for the government and good order of such places so provided, and of the county poor-houses, and for the employment, relief, management and government of the persons therein placed ; but such rules and regulations shall not be valid until sanctioned by a majority of the judges of the county courts of such county in writing.

3. To employ suitable persons to be keepers of such houses or places, and all necessary officers and servants, and to vest such powers in them for the government of such houses as shall be necessary, reserving to the paupers who may be placed under the care of such keepers the right of appeal to the superintendents.

4. In the counties where a poor-house is erected, or other place provided for the poor, to purchase the furniture, implements and materials that shall be necessary, from time to time, for the maintenance of the poor therein, and their employment in labor or manufactures, and to sell and dispose of the proceeds of such labor as they shall deem expedient.

5. To prescribe the rate of allowance to be made to any persons for bringing paupers to the county poor-house or place provided for the poor, subject to such alterations as the board of supervisors may, by a general resolution, make.

6. To authorize the keepers of such houses or places so provided, to certify the amount due to any person for bringing such paupers ; which amount shall be paid by the county treasurer, on the production of such certificate, countersigned and allowed by any two superintendents.

7. To decide any dispute that shall arise concerning the settlement of any poor person, summarily, upon a hearing of the parties ; and, for that purpose, to issue subpoenas to compel the attendance of witnesses, and to administer oaths to them in the same manner, with the like power to enforce such process as is given to justices of the

peace in any matter cognizable by them; their decisions shall be filed in the office of the county clerk within thirty days after they are made, and shall be conclusive and final upon all parties interested.

8. To direct the commencement of suits by any overseers of the poor who shall be entitled to prosecute for any penalties or upon any recognizances, bonds or securities taken for the indemnity of any town or of the county; and in case of the neglect of any such overseer, to commence and conduct such suits, without the authority of such overseers, in their names.

9. To draw from time to time on the county treasurer for all necessary expenses incurred in the discharge of their duties, which drafts shall be paid by him out of the moneys placed in his hands for the support of the poor.

10. To render to the board of supervisors of their county, at their annual meeting, an account of all moneys received and expended by them, or under their direction, and of all their proceedings.

11. To pay over all moneys remaining in their hands within fifteen days after the expiration of their office, to the county treasurer, or to their successors.

2 R. S. 1855, § 16.

**§ 708. Further Powers.**—The superintendents of the poor in the several counties in this State shall audit and settle all accounts of overseers of the poor, justices of the peace, and all other persons, for services relating to the support, relief or transportation of county paupers; and shall from time to time draw on the county treasurer for the amount of the accounts which they shall so audit and settle.

Laws of 1832, chap. 26; 3 R. S. 1870.

This latter act has been construed to mean that it has no reference to *services* performed by the servants and laborers who are employed at the county poor-house.

Hayes v. Symonds, 9 Barb. 268.

Nor to services of an attorney in bastardy proceedings.

Neary v. Superintendents, 98 N. Y. 81.

Nor to contracts made by the superintendents, and so make them sit as judges upon questions relating to their own conduct, and their own corporate liability, *it seems*.

Id. 84. See decisions after next section.

**§ 709.** Reports of commitments, appointments to asylums, reformatories, or other institutions, to be made to the clerk of the board of supervisors.

See "Benevolent Institutions."

As to whether the statute (Laws of 1832, chap. 26) authorizing superintendents of the poor to "audit and settle all accounts. \* \* \* For services relating to the support, relief or transportation of county paupers," confers upon those officers power to audit claims under contracts made with them, *quere?*

A claim of an attorney for services rendered by him on the employment of superintendents of the poor in bastardy proceedings is not one "relating to the support, relief or transportation" of paupers within the meaning of that statute, and no power is conferred upon the superintendents to audit such a claim.

Said officers have power to employ an attorney to conduct such proceedings; they are responsible to the attorney for his services, and he may enforce his claim against them by action.

It seems that every expense they incur by such employment is a county charge, subject to the audit of the board of supervisors.

*Neary v. Robinson et al.*, 98 N. Y. 81.

The superintendents of the poor of the county have no power to expend money for the temporary relief of the poor. The right or duty devolves upon towns and their officers. Nor can the superintendent afford support to paupers elsewhere than at the poor-house, or place provided for that purpose under the direction of the board of supervisors.

*Gallup v. Bell*, 20 Hun, 172.

The superintendents of the poor audit all accounts for services relating to the support of the county paupers, and draw directly on the treasurer for the amount of the accounts they audit (Laws of 1832, p. 43, § 1); in regard to compensation to jurors, boards of supervisors may direct an allowance to them, in which case they are to raise the necessary sum for the purpose, and the jurors are paid directly by the treasurer on the certificate of the clerk of the court of their attendance. In relation to these two classes of claims, therefore, boards of supervisors have no duty to perform as auditors. Their only duty is to raise money to be placed in the treasury sufficient to meet their probable amount.

*Chemung Canal Bank v. The Supervisors of Chemung*, 5 Denio, 522.

The board of supervisors of a county has no power to direct the county treasurer not to pay, out of the poor funds, any drafts drawn by the superintendents of the poor to their own order, or to the order of either of them, nor to direct him not to pay any draft, unless the object for which the money is to be paid be specified therein.

*People, ex rel. Serven, v. Demarest*, 16 Hun, 123.

They are bound to provide funds to pay orders drawn by the superintendents of the poor and certificates given for service as jurors, and if the funds are wasted or lost, to provide others to replace them.

*Chemung Canal Bank v. Board of Supervisors of Chemung County*, 5 Denio, 517.

The office of superintendent of the poor, though vested with corporate powers, is, notwithstanding, a mere agency of the county, and the relation between the county and its superintendent is that of principal and agent.

*People v. Bennett*, 37 N. Y. 117.

An action cannot be maintained against the superintendents of the poor upon an account for services relating to the support of county paupers.

Should the superintendent refuse to audit such an account the proper remedy is by *certiorari*, it seems.

*Vedder v. Superintendents, etc., of Schenectady*, 5 Denio, 564.

Where a person sells to superintendents of the poor, provisions for the poor-house, upon an agreement that it is to be a cash sale, or if an order shall be given, that it shall answer as cash, whereupon the superintendents give him an order upon the treasurer of the county, for the amount, and upon presentment of such order to the treasurer payment is refused, for want of funds, the vendor is remitted to his original right of action against the superintendents, and may recover of them the value of the supplies.

In such a case the county is liable on the contract made by its authorized agents, in the business specially committed to them by the statute; and that liability is to be enforced in a suit against the superintendents.

*Paddock v. Symonds*, 11 Barb. 117.

Superintendents of the poor are not bound to audit the accounts of physicians and others for services rendered to county paupers by request of the overseers of the poor of the several towns; and this, though the services were rendered in pursuance of orders for temporary relief.

It is the duty of the overseers to adjust such accounts and charge them in their bills against the county.

The employment of a physician by the superintendents of the poor of a county does not supersede the right of the overseers of the several towns to employ other physicians to attend county paupers entitled to temporary relief. *Semble*, per COWEN, J.

*Ex parte Green & Brown*, 4 Hill, 558.

The statutes relating to the support of the poor at county poor-houses furnish no authority for a discrimination between county and town poor, in respect to the application of the income of the poor-house farm. On the contrary the legislature intended the income should be applied to the support of the poor of the county generally at the poor-house without distinction.

The statutory provisions obviously contemplate that the benefits resulting from the poor-house and farm shall be common to the county and towns, in respect to the support of the poor at the poor-house, without any regard whatever to the general obligation of each to support its own poor.

The occupancy of the property, the products of the farm consumed thereon and in the poor-house, the labor of the poor in carrying on the farm and the business of the poor-house, the avails of sales of products of the farm and the labor of the poor, are all to go, and be applied, to reduce the expenses of the support of the poor generally, at the poor-house, without any discrimination.

Thus, where the city of Rochester was, by law, in the condition of a town, in respect to the mode of supporting its poor at the county poor-house, it was held that the income of the poor-house farm in Monroe county ought to be applied to the support, indiscriminately, of the county, town and city poor, kept at the county poor-house on said farm.

*City of Rochester v. Supervisors of Monroe*, 22 Barb. 248.

A public officer, who is liable to be sued for services rendered for the public at his request, may confess a judgment in his official capacity for the amount.

The supervisors of the county are, however, not concluded by the judgment; they have a right to go behind it and inquire whether the whole or any part of the cause of action was a county charge.

The overseer of the poor cannot incur for the county a liability beyond the sum of \$10, for relief in a single case, without the consent of one of the superintendents of the poor.

But with this restriction his power of giving temporary relief is independent of the control of the superintendents of the poor.

*Gere v. Supervisors of Cayuga*, 7 How. 255.

Under the provisions of the Revised Statutes, the board of supervisors in each county had power to examine, settle and allow all accounts chargeable against the county. This power was exclusive of all other authority over the subject, to this extent, at least, that when exercised it was subject to no review, and that no action could be maintained against a county for a county charge.

*Huff v. Knapp*, 5 N. Y. 87; *Brady v. Supervisors of New York Co.*, 10 id. 260; *People v. Lawrence*, 6 Hill, 244; *People v. Supervisors of Dutchess Co.*, 9 Wend. 508; *Supervisors v. Briggs*, 2 Denio, 26, 39; *People, ex rel. Outwater, v. Green*, 56 N. Y. 469.

The principles to be deduced from the above decisions seem to be these:

That the superintendents acting within the powers conferred upon them, are

First, a corporation having the superintendence and custody of the poor-house, its inmates, the furnishing of supplies and materials, attendants, etc.;

Second, that they are agents of the county to this extent at least, that acting within their legal powers, they can bind the county *as to third persons*, who, upon receiving orders upon the county treasurer for legal contracts, materials, etc., duly furnished, are entitled to be paid therefor; but that the accounts of the superintendent are to be examined, settled and allowed, the same as other county charges are audited, and thereby the board have a check upon the superintendent as to the amounts expended for which his bondsmen are liable.

See "Audit of Superintendent's Account," *post*.

It is, therefore, essential that the bond, in these cases, be sufficiently large and well secured, as there seems to be no limit to the amount of "*orders*" that may be drawn by the superintendent upon the county treasurer, nor any satisfactory method of knowing how many have been issued and set afloat.

The whole system of laws on this subject is in a very unsettled and chaotic condition, and deserves a thorough revision.

Some counties have special acts on the subject.

## § 710. Majority of Superintendents to Act.

The provision of the Revised Statutes, declaring that a majority of the superintendents of the poor of a county "shall be at all times competent to transact business and to execute any powers vested in the board of superintendents," authorizes the majority to act, irrespective of and without consultation with the minority.

The authority to bind minors as apprentices given to said superintendents may, therefore, be executed by a majority, without a meeting of, or a notice to all.

Johnson v. Dodd, 56 N. Y. 76.

## § 711. Audit of Accounts of Superintendent.

—By subdivision 10 above and by Laws of 1869, chapter 854, section 8, the superintendents are required "to render to the board of supervisors of their county, at their annual meeting, an account of all moneys received and expended by them or under their direction and of all their proceedings, and it is the duty of the board to *audit* the accounts of the superintendents of the poor.

As to counties acting under the Livingston county act, see "Livingston County Poor Law," *ante*.

## § 712. Supervisors to Make Regulations as to Accounts.

SECTION 1. The boards of supervisors of the several counties of this State are hereby authorized to make such regulations and requirements concerning the keeping of poor accounts, and disbursements by overseers of the poor, and their report to town auditors, and also concerning the keeping of poor accounts and disbursements, and the manner of auditing bills presented to them and their report to the board of supervisors by county superintendents of the poor as the efficiency of the service and the protection of the interests of the public may require, all such rules, regulations and amendments thereto to be

adopted by such boards of supervisors at a regular session of the board.

§ 2. This act shall not apply to the county of Richmond.

Laws of 1886, chap. 355.

See form of superintendents' report, *ante*.

**§ 713. Warren County Act—Poor to be a County Charge in Certain Counties.**—In the counties of Warren, Washington, Saratoga and Genesee, poor persons entitled to support as aforesaid, shall be maintained at the expense of the said counties respectively; and all costs and charges attending the examinations, conveyance, support and necessary expenses of paupers within the said counties respectively, shall be a charge upon the said counties, without reference to the number or expenses of paupers which may be sent to the poor-house of said counties from or by any of the towns therein. The said charges and expenses shall be reported by the superintendents of the poor of the said counties to the boards of supervisors therein respectively, and shall be assessed, levied and collected of and upon the taxable real and personal estate in the said counties, in the same manner as other county charges.

3 R. S. 1857, § 23.

**§ 714. When a County Charge in Other Counties.**—The board of supervisors of any county in this State, at any annual meeting, or at any special meeting called for that purpose, may determine to abolish all distinction between county poor and town poor in their counties respectively, and to have the expense of maintaining all the poor a county charge; and upon their filing such determination, duly certified by the clerk of the board, with the county clerk, the said poor shall be maintained, and the expense thereof defrayed in the manner prescribed in the preceding section relative to the counties of Warren, Washington, Saratoga and Genesee.

Id. 1858, § 24.

The supervisors may revive the distinction between town and county poor.

Laws of 1849, chap. 194.

**§ 715. Notice of Determination of Supervisors.**—In those counties where the supervisors shall determine to abolish the distinction between town poor and county poor, and

to have all the poor a county charge, it shall be the duty of the clerk of the board of supervisors immediately to serve notice of such determination on the overseers of the poor of every town in the county. Within three months after the service of such notice, the overseers of the poor of every town shall pay over all moneys which shall remain in their hands, after discharging all demands against them as such overseers, to the county treasurer, to be applied by him toward the future taxes of such town. In case of neglect to pay over such moneys, the county treasurer may maintain an action therefor, in which he shall recover interest on the moneys withheld, from the time they should have been paid over.

3 R. S. 1857, § 21.

The clerk of the board must also serve notice of such determination on the clerk of each town, village or city within such county.

Id., § 25.

In order to render the expense of maintaining all the poor of a county a county charge, pursuant to 3 R. S. 1857, § 24, the board of supervisors must not only determine to abolish the distinction between county and town poor, but must file such determination with the county clerk.

Until such determination be filed, the duties of the officers arising out of such change in the poor system do not attach.

The service of the resolution of the board of supervisors on the town clerks is not essential to effect a change of system, the provisions respecting such service being only directory.

Thomson v. Smith, 2 Denio, 177.

**§ 716. How Supported.**—In all the other counties of this State, except the counties of Warren, Washington, Saratoga, Genesee, and those counties of which the board of supervisors shall file the determination aforesaid, the poor, having a settlement in any town in such county, shall be supported at the expense of such town, and the poor not having such settlement shall be supported by the county in which they may be.

3 R. S. 1858, § 28.

**§ 717. Expenses of Supporting Poor, how Defrayed.**—In those counties where the respective towns are required to support their own poor, the county treasurers thereof shall respectively open and keep an account with each town, in which the town shall be credited with all moneys received from the same, or from its officers, and shall be charged with the moneys paid for the support of the poor chargeable to such town. And if there be a county poor-house, or other place provided in such county for the reception of the poor, the superintendent of the poor of the county shall, in each year, before the annual meeting of the board

of supervisors of such county, furnish to the county treasurer a statement of the sums charged by them, as hereinafter directed, to the several towns for the support of their poor, which shall be charged to such towns respectively, by the county treasurer in his accounts.

§ R. S. 1863, § 47.

In those counties in which a poor-house shall be established, or a place provided, by the superintendents, for the reception of the poor, and in which the several towns shall be liable for the support of their poor respectively, it shall be the duty of the superintendents, annually, and during the week preceding the annual meeting of the board of supervisors, to make out a statement of all the expenses incurred by them the preceding year, and of the moneys received, and exhibiting the deficiency, if any, in the funds provided for the defraying such expenses; and they shall apportion the said deficiency among the said several towns, in proportion to the number and expenses of the paupers belonging to the said towns, respectively, who shall have been provided for by the said superintendents, and shall charge the said towns with the said proportions; which statement shall be by them delivered to the county treasurer, as before directed.

Id., § 48.

At the annual meeting of the board of supervisors, the county treasurer shall lay before them the account so kept by him; and if it shall appear that there is a balance against any town, the said board shall add the same to the amount of taxes to be levied and collected upon such town, with the other contingent expenses thereof, together with such a sum for interest, at the rate of seven dollars on the hundred, as will reimburse and satisfy any advances that may be made, or that may have been made, from the county treasurer, for such town; which moneys, when collected, shall be paid to the county treasurer.

Id., § 49.

The superintendents of the poor in each county shall annually present to the board of supervisors, at their annual meeting, an estimate of the sum which, in their opinion, will be necessary, during the ensuing year, for the support of the county poor; and the said supervisors shall cause such sum as they may deem necessary for that purpose, to be assessed, levied and collected, in the same manner as the other contingent expenses of the county, to be paid to the county treasurer, and to be by him kept as a separate fund, distinct from the other funds of the county.

Id., § 50.



By the Laws of 1875, chapter 482, section 1, subdivision 15, boards of supervisors have power "to direct the payment, by justices of the peace, of all fines and penalties imposed by and paid to such justices in their respective towns, to the supervisors of such towns, on the first Monday in each month, to be applied by them toward the support of the poor of said towns, or to the superintendents of the poor, when the support of the poor is a county charge, and to direct the justices of the peace of such town to report the amount of all fines collected by such justices to the board of town auditors on Tuesday preceding the annual town meeting.

As amended, Laws of 1881, chap. 129; 2 R. S. 945.

As to raising moneys by, and reports, etc., to, the board for counties under the Livingston county act, see that act, *ante*.

Under the Revised Statutes and Warren county act, any neglect by the superintendent to render an account or statement as above required, or to pay over any moneys, shall forfeit \$250.

**§ 718. Certain Counties may Restore the Distinction Between Town and County Poor.**—The board of supervisors in any of the counties of Livingston, Sullivan, Broome, Cortland, Orange, Allegany, Seneca, Franklin, Onondaga and Ulster, at any annual meeting, by a vote of a majority of all the members elected in favor thereof, may determine to restore the distinction between county poor and town poor in their counties respectively; and upon their filing such determination, duly certified by the clerk of the board, with the county clerk, the distinction between the county poor and town poor shall thereupon be restored, from and after the time to be fixed by such board of supervisors, either at the commencement or the close of the year for which said supervisors were elected to serve. It shall not be lawful for any officer, whose duty it may be to provide for the maintenance, care or support of the poor and indigent persons at public expense, to put up at auction or sale, or the keeping, care or maintenance of any such poor or indigent person to the lowest bidder, and every contract which may be entered into for the support, care or maintenance of any such poor or indigent person, in pursuance of or accordance with any bid or bids made at any auction or public competition for the support, care or maintenance of any such poor persons, shall be absolutely void.

Laws of 1848, chap. 176; 3 R. S. 1874.

See note above as to abolishing the distinction between town and county poor.

**§ 719. No Child Between Two and Sixteen Years to be kept at Poor-House.**—It shall not be lawful for any county superintendent or overseer of the poor, board of charity or other officer, to send any child between the ages of two and sixteen years, as a pauper, to any county poor-house or alms-house for support and care, or to detain any child between the ages of two and sixteen years in such poor-house or alms-house ; but such county superintendents, overseers of the poor, boards of charities or other officers shall provide for such child or children, in families, orphan asylums, hospitals or other appropriate institutions, as provided by law. The boards of supervisors of the several counties of the State are hereby directed to take such action in the matter as may be necessary to carry out the provisions of this section. When any such child shall be so provided for or placed in any orphan asylum or such other institution, such child shall, when practicable, be so provided for or placed in such asylum or such other institution as shall then be controlled by persons of the same religious faith as the parents of such child.

Laws of 1884, chap. 438.

**§ 720. Excise Moneys.**—In counties where the poor are a county charge, the excise moneys go to the county treasurer subject to the control of the board of supervisors; in other counties they are disposed of as the town board directs.

Laws of 1874, chap. 444, § 2, as amended by Laws of 1886, chap. 459.

**§ 721. Support of Prisoners Confined Upon Civil Process.**—In any county, if a prisoner actually confined in jail makes oath before the sheriff, jailer or deputy jailer, that he is unable to support himself during his imprisonment, his support is a county charge.

Code of Civil Procedure, § 112

#### OF THE SUPPORT OF INSANE PERSONS.

**§ 722. 2.** On the 12th of May, 1874, the legislature passed an "Act to consolidate the statutes of the State relating to the care and custody of the insane; the management of the asylums for their treatment and safe-keeping, and the duties of the State commissioner in lunacy."

Laws of 1874, chap. 446; 8 R. S. 1901.

By section 2 of title 11 of that act, id. p. 590, all laws or parts of laws inconsistent with or repugnant to the provisions of that act are repealed.

The provisions of the act of 1874, so far as they relate to the powers and duties of boards of supervisors, or of supervisors individually, are as follows :

By section 5, title 1, the county superintendents of the poor of any county or town in which any person shall be chargeable, who shall be, or shall become, a lunatic, may send any such person to any State lunatic asylum, by an order under their hands, and in compliance with the provisions of said act.

**§ 723. Supervisors to Designate Asylum.—**

By section 6, in case of the refusal or neglect of any committee or guardian of any lunatic, or his relatives, to confine and maintain him, or where there is no committee, guardian or relative of sufficient ability to do so, it is the duty of the overseers of the poor, or constables, of the city or town where any lunatic shall be found, to report the same forthwith to the superintendent of the poor, who shall apply to the county judge, special county judge or surrogate, who upon being satisfied, on examination, that it would be dangerous to permit such lunatic to go at large, shall issue his warrant, directed to the constable and overseers of the poor of such city or town, commanding them to cause such lunatic to be apprehended, and to be sent, within the next ten days, to some State lunatic asylum, or to such public or private asylum as may be approved by any standing order or resolution of the supervisors of the county, to be there kept and maintained until discharged by law.

By section 12, if the relatives of a pauper lunatic are not of sufficient ability to maintain him, then the superintendent of the poor of the county shall, upon his order, send such pauper lunatic to any State asylum, or to such public or private asylum as may be approved by a standing order or resolution of the supervisors within ten days.

**§ 724. To Raise Money for Support of Indigent Lunatics at Asylums.—**

By section 14, when a person in indigent circumstances, not a pauper, becomes insane, application may be made in his behalf to any county judge, special county judge, judge of a superior court or common pleas of the county where he resides, and said judge shall fully investigate the facts of the case, both as to the question of his indigence as well as to that of his insanity. And if the judge certifies that satisfactory proof of his insanity has been adduced, and that his estate is insufficient to support him and his family (or, if he has no family, himself) while under the visitation of insanity, then it shall be the duty

of any judge, before whom application for that purpose is made, to cause reasonable notice thereof, and of the time and place of hearing the same, to be given to one of the superintendents of the poor of the county chargeable with the expense of supporting such person in a State asylum, if admitted, and he shall then proceed to ascertain when such person became insane. On granting such certificate the judge may, in his discretion, require the friends of the patient to give security to the superintendent of the poor of the county to remove the patient from the asylum as soon as he shall recover. But in every case where a patient, admitted into an asylum, as before provided, shall have remained there two years and has not recovered, the managers of the asylum may, in their discretion, cause such person to be returned to the county whence he came, and charge the expense of such removal to the county. The judge granting said order of indigence shall file all papers belonging to such proceedings, together with his decision, with the clerk of the county, and report the facts to the supervisors, whose duty it shall be, at their next annual meeting, to raise the money necessary to meet the expenses of support of such indigent lunatic.

By section 15, when an insane person in indigent circumstances, not a pauper, shall have been sent to any State asylum by his friends, who have paid his bills therein for six months, if the superintendent shall certify that he is a fit patient and likely to be benefited by remaining in the institution, the supervisors of the county of his residence are authorized and required, upon an application under oath in his behalf, to raise a sum of money sufficient to defray the expenses of his remaining there another year, and to pay the same to the treasurer of the asylum. And they shall repeat the same for two years more upon like application and the production of a new certificate, of like import, from the superintendent of such asylum.

As amended by Laws of 1880, chap. 164.

**§ 725. Expenses of Sending Lunatic to Asylum and of his Support There.**—By section 16, the expense of sending any lunatic to a State asylum, and of supporting him there, shall be defrayed by the county or town to which he may be chargeable.

By section 32, where a person accused of the crime of arson or murder, or attempt at murder, shall, after having escaped indictment or having been acquitted on the ground of insanity, have been removed to a State lunatic asylum by the direction of a judge, the

county in which such criminal charge arose, or such conviction or acquittal was had, shall defray all the expenses of such person while at the asylum, and the expense of returning him to such county; but the county may recover the amount so paid, from his own estate, if he have any, or from any relative, town, city or county that would have been bound, by existing laws, to provide for and maintain him elsewhere.

By section 23, any person confined in either of the State lunatic asylums upon a criminal charge, and any person so confined, who is under conviction for a crime or who has been tried and acquitted thereof on the ground of insanity, may, upon the application of any superintendent of any asylum, be brought before a justice of the supreme court, who may order his removal to the State Lunatic Asylum for Insane Criminals at Auburn.

*Id.*, as amended by Laws of 1884, chap. 515.

So, when any person confined in a penitentiary, and who shall appear to be insane, be transferred to the State Lunatic Asylum for Insane Criminals at Auburn, under an order of a justice of the supreme court or county judge, the penitentiary from which he was transferred shall be liable for the expenses of his care and maintenance during the time he shall remain in said asylum; provided that he is removed therefrom before the expiration of his sentence. If he shall continue insane after the expiration of the time for which he was sentenced, then the county from which he was sent to said penitentiary shall pay his expenses, as provided in section 22.

*Id.*, §§ 24, 25.

By section 26, if any person in confinement under indictment, or under sentence of imprisonment, or under a criminal charge, or for want of bail for good behavior, or for keeping the peace, or for appearing as a witness, or in consequence of any summary conviction, or by order of any justice, or under any other than civil process, shall appear to be insane, the judge of the county in which he is imprisoned may, if it be satisfactorily proved that such prisoner is insane, discharge him from imprisonment and order his safe custody and removal to a State asylum, where he shall remain until restored to his right mind. When he is sent to an asylum the county from which he was sent shall defray all his expenses while there and of sending him back if returned; but the county may recover the amount so paid from his own estate, if he have any, or from any relative, town, city or county that would have been bound to provide for and maintain him elsewhere.

By section 27, if a person imprisoned on attachment, or any civil process, or for the non-payment of a militia fine, becomes insane, and it be proved to the satisfaction of the judge of the county that he is so, such judge may discharge him from imprisonment and order him into safe custody, and to be sent to a State asylum. And the provisions of section 26, requiring the county to defray the expenses of a patient sent to a State asylum, shall be equally applicable to similar expenses arising under this section.

By section 28, persons charged with misdemeanor, and acquitted on the ground of insanity, may be kept in custody and sent to a State asylum, in the same way as persons charged with crime, and their expenses shall be paid in the like manner.

**§ 726. Fixing Compensation for Conveying Lunatics to Asylums.**—By section 29, the boards of supervisors in the respective counties of this State are empowered, and it shall be their duty, annually, to fix and determine the compensation to be allowed and paid to officers, for the conveyance of lunatics to the insane asylums; and no other or greater amount than is so fixed and determined shall be allowed and paid for such service.

**§ 727. Expenses of Insane Criminals at Asylums, Etc.**—By section 32, whenever any insane person in confinement under a criminal charge, or under a conviction for a crime, or who has been acquitted of crime on the ground of insanity, shall be committed, as prescribed in the act, to any State lunatic asylum, or to the State Asylum for Insane Criminals at Auburn, the county in which such criminal charge arose, or such conviction or acquittal was had, shall defray all the expenses of such person while at such asylum, and the expense of returning him to such county; but the county may recover the amount so paid, from his own estate, or from any relative, town, city or county that would have been bound by existing laws to provide for and maintain him elsewhere. The Code of Criminal Procedure, section 662, makes a similar provision as to the expenses of sending a lunatic criminal under indictment to the asylum, keeping him there and bringing him back.

**§ 728. Liability of County for Support, Etc., of Lunatic at Asylum.**—By section 30 of title 3 of said act of 1874, every insane person supported in the lunatic asylum at Utica shall be personally liable for his maintenance therein, and for all necessary expenses incurred by the institution in his behalf. And the committee, relative, town, city or county that would have

been bound by law to provide for and support him if he had not been sent to the asylum, shall be liable to pay the expenses of his clothing and maintenance in the asylum, and actual and necessary expenses to and from the same.

**§ 729. Supervisors to Levy the Amount.**—By section 31, the expenses of clothing and maintaining, in the asylum, a patient who has been received upon the order of any court or officer shall be paid by the county from which he was sent to the asylum. The treasurer of such county is authorized and directed to pay to the treasurer of the asylum the bills for such clothing and maintenance, as they shall become due and payable, according to the by-laws of the asylum, upon the order of the steward; and the supervisors of said county shall annually levy and raise the amount of such bills, and such further sum as will probably cover all similar bills for one year in advance. Said county shall have the right to require any individual, town, city or county that is legally liable for the support of such patient, to reimburse the amount of said bills, with interest from the day of paying the same.

By section 32, whenever the managers shall order a patient removed from the asylum to the poor-house of the county whence he came, the superintendents of the poor of said county shall audit and pay the actual and reasonable expenses of such removal, as part of the contingent expenses of said poor-house. But, if any town or person be legally liable for the support of such patient, the amount of such expenses may be recovered, for the use of the county, by such superintendents. If such superintendents neglect or refuse to pay such expenses on demand, the treasurer of the asylum may pay the same and charge the amount to the said county. And the treasurer of said county is authorized to pay the same, with interest, after thirty days; and the supervisors of said county shall levy and raise the amount, as other county charges.

**§ 730. Money Paid by County for Expenses and Support of Lunatics may be Recovered.**—

Section 33 provides that every town or county paying for the support of a lunatic in the asylum, or for his expenses in going to or from the same, shall have the same rights and remedies to recover the amount of such payments with interest from the time of paying each bill, as if such expenses had been incurred for the support of the same at other places, under existing laws.

By section 37, it is declared that the terms, "lunacy," "lunatic" and "insane," as used in the act, shall include every species of

insanity, and extend to every deranged person, and to all of unsound mind, other than idiots.

Sections 6 and 7 of title 4 of said act, relative to the Willard Asylum for the Insane, are the same as sections 31 and 33 of title 3, above given.

§ **731. Chronic Insane Paupers.**—By section 20 of chapter 280 of the Laws of 1879, superintendents of the poor of counties designated by the State board of charities may send chronic insane paupers to the Binghamton Asylum for the Chronic Insane. Section 23 of the same act provides that the treasurer of every county having patients in said asylum is hereby authorized and directed to pay to the treasurer of the asylum all bills for the clothing and maintenance of such patients, as they shall become due and payable according to the by-laws of the asylum, upon the order of the steward ; and the supervisors of said county shall annually levy and collect the amount of such bills as other bills and taxes are levied and collected by them, and also such further sums as will probably cover all similar bills for said county for one year in advance. Said county shall, however, have the right to require any individual, town, city or county that is legally liable for the support of such patient or patients, to reimburse it in the amount of said bills with interest from the day of paying the same. Section 24 provides that every town, city or county paying for the support of any inmate in said asylum shall have the right to require any other town, city or county that is legally liable for his support to refund to it the amount so paid, with interest thereon from the time of payment. Section 25 requires that all town and county officers sending a patient to said asylum shall, before sending him, see that he is in a state of bodily cleanliness, and is comfortably clothed, and provided with a suitable change of raiment as prescribed by the by-laws of the asylum.

§ **732. Chronic Insane Patients** are required to be sent to some one of the State asylums, and not kept at the poor-house, unless the board of State commissioners of public charities exempt the county therefrom.

Laws of 1871, chap. 713; 3 R. S. 1916-1923, 1930.

Some counties are to send to the Willard Asylum, others to Binghamton, or to the Hudson River State Hospital, etc.

The expense is a county charge.

### § **733. Support of Indigent Insane, Not Paupers.**

Under the old law an indigent insane person "not a pauper," was to be supported at the asylum by the *county*, not by the several towns.

People, *ex rel.* Supervisors of the Town of Alexander, v. Board of Supervisors, 7 Hill, 171.



But in a case in Herkimer county, decided November, 1886, Judge Vann decided, that under the present law, each *town* was liable for the support of resident "indigent insane, not a pauper" when sent to an asylum.

People, *ex rel.* Russel, v. Board of Supervisors of Herkimer Co. (not yet reported).

In Herkimer county the towns support their own poor, the superintendent of the poor keeping an account with each town therefor.

### OF THE SUPPORT OF IDIOTS.

§ 734. 3. By the act of May 12, 1862, to reorganize the State Asylum for Idiots, and to provide for the government and management thereof, the State Asylum for Idiots is to receive and educate, gratuitously, one hundred and twenty pupils, to be selected in equal numbers, as near as may be, from each judicial district, from those whose parents or guardians are unable to provide for their support therein, to be designated as State pupils.

No idiot shall be received into said asylum, unless the county judge of the county liable for his support shall certify that such idiot is an eligible and proper candidate for admission to said asylum as aforesaid; provided, however, that idiots may be received into said asylum upon the application therefor, signed officially by any county superintendent of the poor, or by commissioners of charity of any of the cities of this State, where such commissioners exist.

Laws of 1862, chap. 220, § 18; 3 R. S. 1937.

**Discharge of Pupil and Payment of Expenses.**—Whenever the trustees shall direct a State pupil to be discharged from the asylum, the superintendent thereof is authorized to return such pupil to the county from which he was sent to the asylum, and deliver him to the keeper of the poor-house of such county; and the superintendents of the poor of said county shall audit and pay the actual and reasonable expenses of such removal, as part of the contingent expenses of said poor-house. But if any town, county or person be legally liable for the support of such pupil, the amount of such expenses may be recovered for the use of the county by such superintendents of the poor. If such superintendents of the poor neglect or refuse to pay such expenses, on demand, the treasurer of the asylum may pay the same and charge the amount to said county; and the treasurer of said county shall pay the same, with interest after thirty days, out of any funds in his hands not otherwise appropriated, and the supervisors of the said county shall levy and raise the amount as other county charges.

Id., § 19.

**§ 735. Duty of Supervisors.**—And the supervisors of any county in the State, from which State pupils may be selected and received into the asylum, are authorized and required, while such pupils remain at the asylum, to raise the sum of \$30 annually, for the purpose of furnishing suitable clothing for each pupil from said county, and on or before the 1st day of April in each year pay over the same to the treasurer of the asylum. The superintendent shall, immediately on receiving any pupil, give notice thereof to the clerk of the board of supervisors of the county from which such pupil shall have been sent to said asylum.

Id., § 17, as amended by Laws of 1867, chap. 739.

**§ 736. 4. Of the Support of the Blind—Admission of Blind to the State Institution.**

See *ante*, § 107.

**Expenses County Charge, Etc.**

See *ante*, § 107.

**§ 737. 5. Of the Support of Deaf-Mutes.**

See *ante*, § 105.

OF BENEVOLENT INSTITUTIONS.

**§ 738. 6.** Chapter 347 of the Laws of 1880 makes provision for the reporting of appointments or commitments to the benevolent institutions of the State. The statute reads as follows:

Each of the asylums, reformatories, homes, retreats, penitentiaries, jails, or other institution of this State in which the board, instruction, care or clothing of persons committed thereto is, or shall be, a charge against any county of this State or town therein, shall be known for the purposes of this act as one of the State benevolent institutions of the State.

§ 1; 3 R. S. 1894.

**Reports by Supervisor and Other Officers to Board of Supervisors.**—It shall be the duty of every judge, justice, superintendent of the poor, overseer of the poor, supervisor or other person who by law is authorized to make commitments or appointments to any of the State benevolent institutions of the State, to make a report in writing to the clerk of the board of supervisors of the county so liable, or of the county in which any town is so liable, for the board, instruction, care or clothing men-

tioned in section 1 of this act ; said report shall be made within ten days after making such commitment or appointment, and shall show, when known, the nationality, age, sex and residence of each person so appointed or committed, and the length of time of such appointment or commitment.

§ 2.

**Reports by Keeper, Etc.**—It shall be the duty of the keeper, superintendent, warden, secretary, director, or other proper officer, of each of the State benevolent institutions of the State, within ten days after receiving any person into any of the institutions mentioned in section 1 of this act, whose board, care, instruction, tuition or clothing shall be chargeable to any town or county, to make a report, in writing, to the clerk of the board of supervisors of the county so liable, or of which any town is so liable. Such report shall show when such persons were received into said institution, and, when known, the name, age, sex, nationality, residence, length of time of commitment or appointment, the name of the officer making such commitment or appointment, and the sum chargeable per week, month or year for such person.

§ 3.

**§ 739. Death, Removal or Discharge to be Reported.**—In case of the death, removal or discharge of any person committed or appointed to any of the institutions mentioned in this act, it shall be the duty of the officers mentioned in section 3 of this act to immediately report to the clerk of the board of supervisors of the respective county the date of such death, removal or discharge.

§ 4.

**§ 740. Officers to Render Sworn Statements of Accounts.**—It shall be the duty of the officers mentioned in section 3 of this act, annually, on or before the fifth day of October, to present to the clerk of the board of supervisors of the county liable for the board, instruction, care, or clothing mentioned in this act, or of the county in which any town is so liable, a sworn statement of the account of such institution with such county or town, up to the first day of said October, and in case of a claim for clothing, an itemized statement of the same, and in case any part of the board, care, tuition, or clothing has been paid by any person or persons, the account shall show what sum has been so paid ; and accompanying such account shall be a report showing the name, age, sex, nationality and residence of each person mentioned in the

account, the name of the officer who made the commitment or appointment, the date and length of commitment or appointment, the time to which the account has been paid, and the amount claimed to the first day of said October, the sum per week or per annum charged, and if no part of such account has been paid by any person or persons, the report shall show such fact duly verified.

§ 5, as amended by Laws of 1881, chap. 273.

**§ 741. Penalty for Neglect.**—An officer mentioned in this act who shall refuse or neglect to make the reports required by this act shall not be entitled to receive any compensation or pay for any services, salary or otherwise, from any town or county to which he is required to make such report.

§ 6.

**§ 742. Filing of Report.**—The clerk of the board of supervisors who shall receive any report or account in pursuance of the provisions of this act shall carefully file the same and present the same to the respective boards of supervisors on the second day of the annual meeting of the board next succeeding the receipt of the same.

§ 7.

**§ 743. Poor-Houses Exempt.**—The poor-houses in the several counties of this State are hereby exempted from the provisions of this act.

§ 8.

Nothing in this act contained shall be held to apply to the county of Kings.

§ 9.

**District Attorneys to Give Bonds.**—In every county except Erie, New York and Kings, the district attorney is required, before entering upon the duties of his office, to execute to the people of this State, with two or more sufficient sureties, being freeholders, a joint and several bond and in such sum as the board of supervisors shall direct, to be approved by the county judge, conditioned for a faithful accounting, payment and transfer of all moneys that may come into his hands in the execution of the duties of his office.

Laws of 1884, chap. 337.

Such bond is to be filed in the county clerk's office.

## CHAPTER XII.

### COMMITTEE ON LEGISLATION.

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|--|---|
| Sec. 744. Forms.   | Sec. 747. Resolution to divide town and erect a new town.         |
| 745. Authorizing survey of highway and making records thereof. | 748. To authorize town meetings to be held by election districts. |
| 746. Authorizing town to borrow money.                         | 749. Declaration of vote by chairman.                             |

### COMMITTEE ON RATIO AND APPORTIONMENT OF TAXES.

- |                                   |   |
|-----------------------------------|---|
| Sec. 750. Apportioning the taxes. | Sec. 751 A. Ratio and apportionment table.  |
| 751. Summary.                     | 752. Directions for preparing the schedule. |

### COMMITTEE ON LEGISLATION.

§ 744. **Forms.**—The following forms are believed to fully comply with the requirements of Laws of 1875, chap. 482.

#### 1. For Bonding.

##### RESOLUTION No....~

Number.

— A RESOLUTION to Borrow \$14,000 on the credit of the county, by the issue of County Bonds therefor, and to Authorize the County Treasurer to issue and negotiate said bonds for the purpose of Altering and Improving the County House at Rome, N. Y., passed in pursuance of the provisions of chapter 482 of the Laws of 1875, and its amendments, by a vote of a Majority of all the Supervisors Elected to the Board of Supervisors of Oneida county voting in favor thereof, by yeas and nays.

Title and statement.

*Resolved*, That the funds wherewith to alter and improve the county house at Rome, be realized from bonds issued by said county, and bearing interest at 4 per cent per annum, in manner following: Resolutions.

Series No. 1. "For the altering and improving the county house," four thousand dollars, to mature March 1, 1887, payable at the office of the county treasurer.

Series No. 2. "For the altering and improving the county house," five thousand dollars, to mature March 1, 1888, payable at the office of the county treasurer.

Series No. 3. "For the altering and improving the county house," five thousand dollars, to mature March 1, 1889, payable at the office of the county treasurer.

*Resolved*, That the county treasurer be and he is hereby authorized and directed to issue and negotiate said bonds, according to law and not less than the par value thereof, and to the best advantage, and apply the proceeds thereof in payment of the expenses of said alteration and improvement, and that prior to the issuing and negotiation of said bonds, said county treasurer execute, acknowledge and deliver to this board, a bond in pursuance of section 3, chapter 482, Laws of 1875, in the penal sum of \$20,000 with two sureties to be approved by the Oneida county judge, for the faithful performance of his duty in the issue of such bonds and the lawful application of the funds arising therefrom, and the full accounting therefor, and of the funds which may be raised by tax for the payment thereof which may come into his hands annually.

*Resolved*, That all disbursements be made by the county treasurer, and only on an order issued by the committee heretofore appointed or a majority thereof.

*Resolved*, That the form of the bond so to be issued shall be as follows.

Form of  
obligation.

"No ...

Series No....

...Bond.. County of Oneida.... For the Altering and Improving the County House.

Know All Men by These Presents, that the county of Oneida is held and firmly bound unto..... in the sum of.... dollars, to be paid to the said ..... his or their certain representatives, successors or assigns on the 1st day of March, 188..., for which payment well and truly to be made, the said county of Oneida binds itself firmly by these presents.

Dated the...., day of ..... 188..

The Condition of this Obligation is such that if the above-bounden County of Oneida shall well and truly pay or cause to be paid to the above-named..... his or their certain representatives, successors or assigns, the sum of .....dollars, and annual interest upon all sums unpaid thereon, to be paid on the first day of March, as the same shall occur, at the rate of four per cent from the date of the last payment thereof, then this obligation shall be void; otherwise to remain in full force and virtue.

All payments of principal and interest to be made at the office of the county treasurer.

This bond is issued in pursuance of chapter 482, Laws of 1875, and of a resolution of the board of supervisors of said county of Oneida, passed December...., 1885.

In witness whereof, the said county has caused these presents to be attested by the official seal of said board of supervisors, and signed by the treasurer of said county the day and year above written.

.....  
COUNTY TREASURER.

Certifi-  
cate.

STATE OF NEW YORK, }  
ONEIDA COUNTY, }  
IN BOARD OF SUPERVISORS, } ss.:  
Dated Dec. 29, 1885.

The foregoing resolution was duly passed by a majority of all the members elected to the said board, voting in favor thereof by yeas and nays.

[L. s.]

By Order of the Board.

R. B. MAXFIELD,  
CLERK.

LESTER G. WAUFUL,  
CHAIRMAN."

## § 745. 2. Authorizing Survey of Highway and Making Records Thereof:

### RESOLUTION No..

A resolution authorizing and directing the highway commissioner of the town of Lee, at the expense of said town, to cause surveys of any and all highways in said town, and to make a complete systematic record thereof, and establish the location of said highways by suitable monuments.

Passed in pursuance of subdivision 11 of section 1 of chapter 482 of the Laws of 1875, and the amendments thereof, by a vote of a majority of all the supervisors elected to the board of supervisors of Oneida county, including the supervisor from the town of Lee, voting in favor thereof by yeas and nays.

*Resolved*, That the highway commissioner of the town of Lee be, and he is hereby authorized and directed, at the expense of said town, to cause survey to be made of any and all highways in said town, and to make a complete and systematic record thereof, and to revise, collate and rearrange existing records of highways, and to correct and verify the same by new surveys, and to establish the location of highways by suitable monuments whenever such commissioner may deem it expedient.

Such records so made or revised, corrected and verified, shall be deposited with the town clerk of said town, and shall thereafter be the lawful records of the highways which they describe, but shall not affect rights pending in any judicial proceedings commenced prior to the deposit with the town clerk of such new or revised records

STATE OF NEW YORK, }  
COUNTY OF ONEIDA, } ss.:  
IN BOARD OF SUPERVISORS, }  
Nov. 18th, 1885.

[L. S.] The foregoing resolution was duly passed by a majority of all the members elected to said board, including the supervisor of the town of Lee, voting in favor thereof by yeas and nays.

, CLERK.

, CHAIRMAN.

### 3. Authorizing Levy for Road-Scraper.

(Number, title and statement as before.)

*Resolved*, That pursuant to the certificate and request of the board of auditors of the town of Deerfield, made to the board in accordance with the provisions of chapter 398, Laws of 1883, and duly placed upon the files of this body, the following sums, as apportioned by said auditors to the several highway districts in said town, viz.: District No. 2, \$58.86; District No. 5, \$58.40; District No. 16, \$24.36; District No. 41, \$58.40; District No. 43, \$16.86; District No. 47, \$19.50; aggregating the sum of \$236.38, and the amount of said tax, as extended against the owners of the taxable property in said districts, for the purpose of procuring and defraying the cost of two Waldo road-scrapers for the joint use of said highway districts, be, and the same is hereby confirmed in each and every respect, and that the collector of taxes in and for said town be directed to pay the moneys resulting from the said taxes to the commissioner of highways thereof.

(Add certificate.)

This resolution should be passed *after* the tax against the proper tax payers has been *extended and entered in the assessment-roll*.

### § 746. 4. Authorizing Town to Borrow Money.

(Number, title and statement as before.)

WHEREAS, The supervisor of the town of \_\_\_\_\_ has applied, by and with the consent of the commissioners of highways, justices of the peace and town clerk of said town, to borrow the sum of \$ \_\_\_\_\_ for and on credit of said town for the purpose of liquidating the expenses of erecting and maintaining bridges therein, therefore

*Resolved*, That the supervisor of the town of \_\_\_\_\_ be and he is hereby authorized to borrow the sum of \$ \_\_\_\_\_ for said purpose and issue town bonds therefor, and that the following form of bonds to be issued for such loan is hereby prescribed. (*Here insert form of bond as in No. 1 above*, adding, in witness whereof, the said town has caused these presents to be sealed and signed by the supervisor

of said town and indorsed by the certificate of the town clerk to the effect that such bonds are issued with the consent of the highway commissioners, justices of the peace and town clerk of said town at a meeting thereof duly held on the day of .)

*Resolved*, That said supervisor be and he is hereby authorized and directed to issue and negotiate said bonds according to law at not less than the par value thereof, and apply the proceeds thereof in payment of said expenses, and that prior to the issuing and negotiation of said bonds, said supervisor execute, acknowledge and deliver to said town clerk, for and on behalf of said town, a bond in the penal sum of \$ , with two sureties to be approved by said highway commissioners, justices of the peace and town clerk, for the faithful performance of his duty in the issuing of said bonds and the lawful application of the funds arising therefrom, and the full accounting therefor and of the funds which may be raised by tax for payment thereof, which may come into his hands to the board of supervisors.

(Add certificate.)

## § 747. 5. Resolution to Divide Town and Erect a New Town.

(Number, title and statement as before.)

WHEREAS, Application has been duly made to the board of supervisors of county to erect a new town in said county by more than twelve freeholders of each of the towns to be affected by the division, alteration and erection, and a map and survey of the towns to be affected thereby, showing the proposed alterations, has been duly furnished, therefore

*Resolved*, That all that part of the town of described and bounded as follows, viz.: (insert boundaries with the same accuracy as in deeds) is hereby erected into a separate town, to be hereafter known and distinguished by the name of

The first annual town meeting in the town hereby erected shall be held at the house now occupied by , in said town, on the 22d day of March, 1864; and thereafter the same shall be held on the same day that other towns hold their annual town meetings in said county of

A. B., C. D. and E. F., electors of said town, are hereby appointed to preside at the first town meeting to be held in said town of , to appoint a clerk, open and keep the polls, and shall have and exercise the same powers as justices of the peace when presiding at town meetings, and in case any of said three electors above named shall refuse or neglect to serve, the electors of said town present at such meeting shall have power and they are hereby authorized to substitute some elector of said town for each one so refusing or neglecting to serve.

All the rest and remainder of the town of is hereby erected into a separate town, to be hereafter known and distinguished as the town of .

The first annual meeting in the town hereby erected shall be held at the house now occupied by , in said town, on the 22d day of March, 1864; and thereafter the same shall be held on the same day that other towns hold their annual town meetings in said county of

M. S., A. B. and S. W., electors of said town, are hereby appointed to preside at the first town meeting to be held in the said town of , to appoint a clerk, to open and keep the polls, and have and exercise the same powers as justices of the peace when presiding at town meetings, and in case any of said electors last above named shall refuse or neglect to serve, the electors of said town present at such meeting shall have power, and they are hereby authorized, to substitute some elector of said town for each one so refusing or neglecting to serve.

This act shall take effect on

(Add certificate).

A certified copy of this resolution and of the maps should be filed in the office of the secretary of State.



## **§ 748. To Authorize Town Meetings to be Held by Election Districts.**

(Number, title and statement as before.)

The board of supervisors of the county of ( ) in pursuance of subdivision 26 of section 1, chapter 482, Laws of 1875, do hereby resolve and enact,

1. The town of shall be divided, as the same is now divided, into town election districts, for the election of all town officers, required by law, to be elected by ballot.

2. District Number One shall comprise the present Election District Number One, in said town, and shall hold its elections therein at the village of .

3. District Number Two shall comprise the present Election District Number Two in said town, and shall hold its elections at the village of .

4. District Number Three shall comprise the present Election District Number Three in said town, and shall hold the elections therein at the village of .

5. The supervisor, assessors and town clerk of said town shall meet at the town clerk's office, in said town, on the first Monday of February, as the same shall hereafter occur, at ten o'clock in the forenoon, and form themselves into a board; and in case a majority of said officers for any cause do not attend on that day, it shall be the duty of those who do attend, to adjourn to some future day, not exceeding five days, and shall immediately give notice in writing to those officers who do not attend of the time of such adjournment; and it shall be the duty of such officers to attend on said adjourned day, and proceed in the same manner as though a majority had attended on the day appointed herein. They shall designate the house in each of the places herein named at which town elections shall be held during the year, and they shall thereupon give notice, written or printed, or partly written and partly printed, of the annual town elections in said districts, together with a list of all such town officers as are to be elected at such election, and post the same in at least ten public places in each district, at least six days previous to the holding of such annual town elections, which elections shall be the same day on which the annual town meeting now is, or shall hereafter be designated, shall be held.

6. The said town officers shall also at the meetings herein required to be held by them on the said first Monday of February, as the same shall hereafter occur, designate and assign one justice of the peace of said town, together with the inspectors of election now provided by law in each election district, to hold the said election in each of said districts, who shall act as the board of inspectors thereof for such districts, and the said inspectors shall be allowed to vote in the districts where they shall be respectively designated and assigned, which designation and assignment shall at the time of making the same, be signed by the board and filed in the office of the town clerk, who shall immediately cause written or printed notice thereof to be given to the officers designated as inspectors of elections in each of said districts.

7. The officers thus assigned and designated shall be the inspectors of the annual and special town elections held in the several districts in said town for which they have been appointed, for the election of all town officers required by law to be elected by ballot.

8. In case of a vacancy in the board of inspectors in any election district in said town, or of the absence or inability of any town officer appointed as aforesaid to act as inspectors at any election, the inspectors who are present are hereby authorized and empowered to fill all vacancies by appointment from among the electors of such district for the time being, who shall take the oath of office as hereinafter provided.

9. The inspectors of the said elections shall receive the same compensation provided by law for such services at the general elections.

10. If a special election shall be called to fill a vacancy in any town office, the town clerk shall give the like notice, provided in section 5, together with a list of such town officers as are to be chosen at such election; and the justices of the peace in said town shall meet at the office of the town clerk on the succeeding day, and proceed to complete the canvass and declare the result as hereinafter provided for the annual town elections.

11. The inspectors of each election district shall meet at the time and place

where an election shall have been appointed to be held therein, and shall proceed to organize themselves as a board, for the purpose of presiding at, and conducting said election.

12. The inspectors shall appoint one of their number chairman of the board, who shall administer the constitutional oath of office to the other inspectors, and the same oath shall then be administered to the chairman by one of the other inspectors.

13. The inspectors, or a majority of them, shall then appoint a clerk from their number, who shall take the constitutional oath of office, which shall be administered to him by the chairman, and such clerk shall keep a poll-list, and make such other minutes as may be required.

14. Before the electors shall proceed to vote for any town officer, they shall determine the hour for closing the poll of such election, and proclamation shall thereupon be made of such hour.

15. The inspectors shall possess the same authority to preserve order as is vested in the board of inspectors at a general election, and shall proceed in the same manner, and be governed by the same rules provided for the election of town officers in title 3, article 1, of the Revised Statutes.

16. As soon as the poll of an election district shall have been finally closed, the inspectors in their respective districts shall proceed to canvass the votes. Such canvass shall be public, and shall not be adjourned or postponed until it shall have been finally completed.

17. When the canvass shall have been completed, and the result ascertained, a statement of all the votes for each candidate shall be made in said meeting, signed and certified by the presiding officer and clerk of such district, with one ballot of each kind or party found to have been given for the officers chosen at such election, to be securely attached to such statement.

18. The inspectors in each district shall designate one of their number who shall deliver such statement so made and certified to the board of the annual town meeting, which shall be held at the office of the town clerk, on the succeeding day, on or before ten o'clock in the forenoon thereof.

19. The board of such annual town meeting shall then proceed to complete the canvass by adding all the statements from the several districts together, and declare the result, as though such votes had been polled at such annual town meeting, and the persons having the greatest number of votes shall be declared elected to the office for which they have been respectively designated.

20. All resolutions for raising money in said town for roads or bridges, or for any other purpose, which are usually, or are required to be, submitted to a vote of the electors at the annual town meeting, shall be submitted to the electors of each election district in said town, and the electors thereof shall vote thereon by ballot.

It shall be the duty of the inspectors of election of each district to return to the board of annual town meeting, at the time of making return of votes for town officers as hereinbefore provided by this act, the whole number of votes for and against each resolution so voted upon in their respective districts; and it shall be the duty of such board of annual town meeting to canvass and declare the result of such votes.

21. If the election districts, as now constituted in said town, shall hereafter be altered or changed in any respect, the provisions contained in the first, second, third and fourth subdivisions hereof shall conform to such alteration or change.

22. This act shall take effect immediately.

(Add certificate.)

## § 749. Declaration of Vote by Chairman.

The proper form for declaring the result of the vote on these questions is, "the resolution having received the affirmative vote of a majority (or *two-thirds as the case may be*) of all the members elected to the board\* is duly passed."

If the resolution enacts a special ordinance for one town, insert after the asterisk (\*) "including the supervisor of the town of \_\_\_\_\_ voting in favor thereof."

## COMMITTEE ON RATIO AND APPORTIONMENT OF TAXES.

## 1. TAX TO BE LEVIED.

A statement of the amount of assessment for each county, as fixed by the board of equalization (the State board) shall be certified by said board and deposited in the office of the comptroller as soon as completed, and before the tenth day of October in each year. The comptroller shall immediately ascertain from this assessment the proportion of State tax each county shall pay, and send a statement of the amount by mail to the county clerk and the chairman and clerk of the board of supervisors of each county.

If the name or residence of the chairman or clerk of the board of supervisors shall be unknown to the comptroller, he may inclose such statement in an envelope addressed to him by his name of office, and directed to the county town of the county. The county clerk shall file the statement received by him in his office, and immediately send a copy thereof to the chairman of the board of supervisors of the county.

Laws of 1859, chap. 312, § 8; 2 R. S. 1000.

The amount of State tax which each county is to pay, so fixed and certified by the comptroller as aforesaid, shall be raised and collected by the annual collection of taxes, in the several counties in the manner now prescribed by law.

Id., § 9.

The moneys necessary to defray the county charges of such county shall be levied on the taxable property in the several towns in such county, in the manner prescribed in the thirteenth chapter of this act. And in order to enable their respective county treasurers to pay such contingent expenses as may become payable from time to time, the boards of supervisors of the several counties shall annually cause such sum to be raised in advance, in their respective counties, as they shall deem necessary for that purpose.

2 R. S. 979, § 5.

If the board neglect or refuse to include and assess such taxes, *mandamus* lies to compel them to do so.

## § 750. Apportioning the Taxes.

This is one of the most important duties of the session, so far as accuracy is concerned; for errors by this committee will, innocently and unintentionally, inflict gross injustice upon some of the towns, and unduly favor others.

Too much care and attention cannot, therefore, be observed, by those to whom this duty is assigned, in thoroughly testing the accuracy of the tables made by them for this purpose.

The system by which this is reached in the several boards of supervisors is doubtless as varied as the number of such boards.

In the county of Oneida, the *blanks* used for this purpose were prepared by J. B. Cushman during his service as clerk of the board (1850 to 1857) and now remain in use in this county.

Experience has demonstrated that all the moneys levied by the board, when correctly entered in the tables and so consolidated by columns, will be properly accounted for. The accuracy of this result is entirely dependent upon the committee having this branch of duty in charge.

The *headings* of this sheet are given herewith, and with it a copy of the directions for preparing it.

The "summary" of both town and county charges is prepared by the clerk, who enters them in the order, and at the time the same are levied, a duty requiring great care and close attention on his part to include all the amounts which have been levied, and which are to be raised by the apportionment of the same. This sheet is furnished to the committee, from which the amounts are entered in



## FUTURE LIABILITIES.

Appropriation—	Judiciary fund.....	\$18,000 00	
“	Salary fund .....	11,700 00	
“	Asylum fund .....	11,000 00	
“	Poor fund .....	15,000 00	
“	To pay jail bond, series 4 .....	11,000 00	
“	To pay interest on jail bond.....	1,900 00	
		<hr/>	\$68,600 00
Total State and county charges.....			<hr/> <hr/> \$346,329 76

## SUMMARY OF TOWN CHARGES.

ANNSVILLE .....	Town audits.....	\$1,311 44	
	Erroneous taxes.....	169 25	
	Miscellaneous .....	20 96	
	Justices and constables .....	18 80	
		<hr/>	\$1,520 45

(And so on with each town.)

§ 751A. Ratio and Apportionment Table.

NAME OF TOWN.	Name of collectors.	Valuation by assessors, including personal estate.	Corrected valuation, including personal estate.	1. Uncollected highway taxes on non-resident lands.	2. Amount levied for the support of roads and bridges.	3. Amount to be paid to commissioners of highways.	4. Amount to be paid to the supervisors.	5. Rejected taxes, levied on the same town.	6. Unpaid resident taxes, levied on the same town.	7. Whole amount of town charges.	8. Rejected taxes re-levied on the same land.	9. Uncollected school taxes on non-resident lands.	10. Unpaid resident taxes re-levied on the same land.	11. Deficiency of tax of 18, to be added to the towns share of county charges.	12. Surplus of taxes of 18, to be deducted from the towns share of county charges.	13. Omitted taxes of 18, levied the current year, to be deducted from the amount to be raised in the town (see column 17, and the ratio made upon balance.	14. Whole amount of county charges to be levied upon each town.	15. State tax of mill on corrected valuation.	16. Whole amount of State tax levied on each town.	17. Whole amount of State tax and town and county charges to be levied on each town.	18. Amount to be paid to county treasurer.	19. Deficiency of tax of 18.	20. Surplus of tax of 18.	21. Log tax to be collected by separate warrants.	Ratio for 18.		
Annsville.																											Annsville.
Augusta.																											Augusta.
Ava.																											Ava.
Boonville.																											Boonville.
Bridgewater.																											Bridgewater.
Camden.																											Camden.
Deerfield.																											Deerfield.
Florence.																											Florence.
Floyd.																											Floyd.
Kirkland.																											Kirkland.
Lee.																											Lee.
Marcy.																											Marcy.
Marshall.																											Marshall.
New Hartford.																											New Hartford.
Paris.																											Paris.
Ramsen.																											Ramsen.
Rome.																											Rome.
Sangerfield.																											Sangerfield.
Steuben.																											Steuben.
Trenton.																											Trenton.
Utica, 1st ward.																											Utica, 1st ward
12th ward.																											12th ward
Vernon.																											Vernon.
Verona.																											Verona.
Western.																											Western.
Westmoreland.																											Westmoreland.
Whitestown.																											Whitestown.

To the BOARD OF SUPERVISORS OF THE COUNTY OF ONEIDA:  
The committee to ascertain and apportion the amount of taxes levied, report that the total amount of county charges directed by the board to be raised is \$ ; that in apportioning the same the committee adopted the ratio of which produces the sum stated in the footing, being \$ than the appropriation, and they further report the above tabular statement, containing also the amounts levied for other purposes, and recommend that the sums therein stated be raised by tax as therein assessed, for the purpose therein mentioned, and that the resolution herewith submitted be adopted.  
Resolved, That the report of the committee on apportionment and ratio of taxes be concurred in and that the amounts as contained in the tabular statement thereof, hereto annexed, be and the same are hereby levied upon the taxable property in the county.  
At the annual meeting of the board of supervisors of the county of Oneida, 18 , the above schedule was adopted by said board, together with the recommendation of the committee to raise the sums therein stated for the purposes therein mentioned.  
CHAIRMAN. CLERK.

## § 752. Directions for Preparing the Schedule.

Enter the amount reported to the supervisor of the town by the overseers of highways, and levied by the board, in column.....	No. 1
Enter the amount required by the commissioners of highways, and the amount voted by the town to be raised for the support of roads and bridges, in column.....	2
Enter the amount of columns 1 and 2 as standing opposite each town, in column.....	3
Enter the amount of town expenses as audited by the town auditors, including the amount levied upon the town for other purposes by the board (see Clerk's Summary), in column.....	4
Enter the amount of "rejected taxes," as returned by the comptroller to the county treasurer, and by resolution of the board levied upon the town, in column.....	5
Enter the amount of unpaid resident taxes, as reported by the county treasurer and levied upon the town by resolution of the board (see Report of Committee), in column.....	6
Enter the amount of columns 2, 4, 5 and 6, in column.....	7
Enter the amount of "rejected taxes," as returned by the comptroller to the county treasurer, and by resolution of the board reassessed upon the same lands, in column.....	8
Enter the amount of uncollected school taxes as reported to the supervisor of the town, by the trustees of the school districts, and levied upon the lands by resolution of the board, in column.....	9
Enter the amount of unpaid resident taxes, as reported by the county treasurer, and by resolution of the board re-levied on the same lands, in column.....	10
Enter the amount charged in the treasurer's account for the current year as deficient therein the past year in the several towns, in column.....	11
Enter the amount of column 20 of the preceding year, in column....	12
Enter the omitted taxes of the preceding year, and levied the current year upon petition of the assessors of the respective towns and wards, pursuant to chapter 453, Laws of 1865, and chapter 575 Laws of 1868 (see §§ 325, 343, <i>ante</i> ), in column.....	13
Enter the <i>pro rata</i> portion of the aggregate of county charges, with the amount of column 11 <i>added</i> , or column 12 <i>deducted</i> (as the case may be), in column.....	14
Enter the State tax upon the <i>corrected valuation</i> of the town as required by communication from the comptroller, in column.....	15
Enter the amount of columns 14 and 15, in column.....	16
Enter the amount of columns 7 and 16, in column.....	17
Enter the amount of columns 5, 6, 8, 9, 10, 16 and 20, in column.....	18
Enter the <i>excess</i> or <i>deficit</i> of the extensions and footings of the supervisors' tax book, for current year, in columns.....	19, 20
Enter the amount of the assessors' taxes upon dogs as returned to the supervisor, and reported to the board by the committee upon footing assessment-rolls, in column.....	21

NOTE.—The amounts in column 13 should be deducted respectively from the town's share to be raised (see column 17), and the ratio made upon the balance. The amount of tax produced by the ratio, added to the sum thus deducted, should equal the aggregate required to be raised in such town. No other action by the committee is required, in regard to the amounts contained in column 13.

To insure accuracy.—Each page of the assessment-roll should be proved at the completion of such page by a comparison of the taxes as extended, with the amount of such taxes upon the gross sum of the page.

## CHAPTER XIII.

### OF THE DUTIES OF THE CLERK.

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|--|--|
| Sec. 753. Appointment of a clerk.            | Sec. 768. To return value of estate.             |
| 754. His compensation.                       | 769. Incorporated companies.                     |
| 755. Accounts to be filed.                   | 770. When collector of taxes refuses to serve.   |
| 756. Accounts to be numbered.                | 771. Grand jury list.                            |
| 757. Form of register of accounts.           | 772. Grand jury drawn by supervisors.            |
| 758. May administer oaths.                   | 773. New towns, erection of.                     |
| 759. To make statement.                      | 774. Special meetings, clerk may call.           |
| 760. To publish abstracts of town audits.    | 775. School tax.                                 |
| 761. To publish county audits.               | 776. In relation to a seal.                      |
| 762. Form of statement.                      | 777. Summary.                                    |
| 763. To publish reports as to town debts.    | 778. County orders.                              |
| 764. To deliver abstract of poor.            | 779. To transmit proceedings to State library.   |
| 765. To serve notice relative to the poor.   | 780. Duty of board of supervisors.               |
| 766. To report indebtedness of counties.     | 781. Clerk cannot be appointed county treasurer. |
| 767. To deliver statement of railroad taxes. |  |

**§ 753. Appointment of a Clerk.**—Each board of supervisors shall, as often as may be necessary, appoint some proper person to be their clerk, who shall hold his office during their pleasure, and whose general duty it shall be,

1. To record, in a book to be provided for the purpose, *all* the proceedings of the board.
2. To make regular entries of all their resolutions or decisions on all questions concerning the raising or payment of moneys.
3. To record the vote of each supervisor on any question submitted to the board, if required by any member present.
4. And to preserve and file all accounts acted upon by the board.

2 R. S. 927, § 9.

In some counties boards of supervisors have directed their past proceedings to be expunged from their records and certain proceedings to be entirely omitted from such records, leaving the resolution *directing such expunging* to remain, as the authority for such omission.

Such proceedings are not only very improper, but of doubtful validity, for the emasculated journal would not thus contain "a record of *all*" its action upon the questions before them. A majority could in this manner make the records exhibit *unanimous* votes upon every proposition considered by them.

If votes for expunging certain matters from their records are taken, such votes should only be recorded as making such expunging *pro forma* and not by mutilation of the records.

**§ 754. His Compensation.**—The clerk shall receive a reasonable compensation for his services, to be fixed by the board of supervisors, and to be paid by the county.

. Id., § 10.



**Books, Etc., to be Deposited with Clerk.**—The books, records and accounts of the boards of supervisors shall be deposited with their clerk, and shall be open, without reward, to the examination of all persons.

Id., § 11.

**§ 755. Accounts to be Filed.**—It shall be the duty of the clerk to designate upon every account upon which any sum shall be audited and allowed by the board, the amount so audited and allowed and the charges for which the same was allowed; and he shall also deliver to any person who may demand it, a certified copy of any account on file in his office, on receiving from such person six cents for every folio of one hundred and twenty-eight words contained in such copy.

Id., § 12.

**756. Accounts to be Numbered.**—All accounts presented in any year to the board of supervisors of any county shall be numbered, from number one upward, in the order in which they are presented, and a memorandum of the time of presenting the same, of the names of the persons in whose favor they shall be made out and by whom they shall be presented, shall be entered in the minutes of the board to which they shall be presented; and no such account after being so presented shall be withdrawn from the custody of the board or its clerk for any purpose whatever, except to be used as evidence upon a judicial trial or proceeding; and in such case it shall, after being so used, be forthwith returned to such custody.

Laws of 1845, chap. 180, § 28; 1 R. S. 846.

### § 757. Form of Register of Accounts.

*REGISTER of Accounts presented to the Board of Supervisors of County, for audit at their Annual Session, 18 .*

Date.	No.	NAMES OF CLAIM-ANTS.	By whom presented.	To which committee referred.
18 Nov.	1 2 3 4 5 6 7 8 9 10 and so on			

**§ 758. May Administer Oaths.**—The clerks of boards of supervisors of the several counties in this State have the same power as the chairman thereof, to administer oaths to any person concerning any matter submitted to the board, or connected with their powers or duties.

Laws of 1856, chap. 108.

**§ 759. To Make Statement.**—It shall be the duty of clerks of boards of supervisors on the 31st day of December, or within ten days previous thereto, in each year, to make out a statement showing,

1. The amount of compensation audited by the board of supervisors, to the members thereof, severally, within the year, and the items and nature of such compensation as audited.

2. The number of days the board shall have been in session within such year, and the distance traveled by the members respectively, in attending the meeting of the board.

3. Whether any accounts were audited or allowed without being verified according to law, for any member of the board of supervisors, or any other person, and if any, how much, and for what.

And such statement shall be certified by such clerk, and be printed in a newspaper printed in the county, in the manner that the accounts audited by boards of supervisors are now required by law to be printed, within two weeks after said statement shall be so made out, and it shall be the special duty of such clerk to see that the same is so published, and for every intentional neglect so to do, such clerk shall be deemed guilty of a misdemeanor.

Laws of 1847, chap. 455, § 14; 1 R. S. 849.

**§ 760. To Publish Abstracts of Town Audits.**—The town auditors are required to make, annually, brief abstracts of the names of all persons who have presented to said board accounts to be audited, the amounts claimed by each of said persons, and the amounts finally audited by them respectively, and to deliver said abstracts to the clerk of the board of supervisors, and the said clerk is to cause the same to be printed with the statements required to be printed by the section last above.

Id., § 24.

See "Form," § 476B.

**§ 761. To Publish County Audits, Claimants, and Equalization Proceedings.**—It shall be the duty of the board of supervisors in each county in this State, annually,

to publish in one or more public newspapers in such county, the name of every individual who shall have had any account audited and allowed by said board, and the amount of said claim as allowed, together with the amount claimed, and also their proceedings upon the equalization of the assessment-roll.

Laws of 1839, chap. 369.

It is the duty of the clerk to attend to this.

## § 762. Form of Statement, Audits, Etc., to be Published.

### COUNTY AND TOWN ACCOUNTS.

Statement of accounts audited by the boards of town auditors and the board of supervisors of Oneida county, the proceedings upon the equalization of the assessment-roll of said county for the year 188 :

1. Abstract of the names of all persons who have presented accounts to the boards of town auditors and the board of supervisors in and for said county, for the year 188 , and the amount allowed by said boards to each of said persons respectively (as shown by their several abstracts), and charged and levied by the board of supervisors upon said county and towns, published in pursuance of Laws of 1839, chap. 369, Laws of 1847, chap. 455.

#### TOWN OF

County charges as audited by the board of supervisors and levied upon the county:

NAME OF CLAIMANT.	Claimed.	Allowed.
A. B.....	\$	\$
C. D. ....		
Town charges as audited by the board of supervisors and levied upon said town:		
E. F.....	\$	\$
G. H.....		
Town audits as audited by the board of town auditors of said town:		
J. K.....	\$	\$
M. N.....		
O. P.....		

And so on with each town.

## 2. SUPERVISORS' ACCOUNTS.

ONEIDA COUNTY TO J. D. CORCORAN, DR.

	Claimed.	Allowed.
December 30, 188 .		
To annual salary as supervisor* .....	\$150 00	\$150 00
To making one copy assessment-roll, 1,292 written lines .....	15 92	15 92
To mileage to and from session once, 32 miles at 8 cts. ....	2 56	2 56
Total.....	\$168 48	\$168 48

## 3. PROCEEDINGS UPON EQUALIZATION OF ASSESSMENT-ROLL AS THE SAME WAS CONFIRMED BY THE BOARD.

## REPORT OF THE COMMITTEE ON EQUALIZATION.

TOWNS.	No. of acres.	Real estate by assessors.	Real estate as equalized.	Personal.	Total.
Annsville .....	36,382	\$580,010	\$580,010	\$17,400	\$597,410
<i>And so on with each town.</i>					
	733,602	\$43,596,594	\$43,596,594	\$4,418,408	\$48,015,002

BOARD OF SUPERVISORS, }  
 CLERK'S OFFICE, } ss.:  
 COUNTY OF ONEIDA, }

I hereby certify that the foregoing list embraces the names of all persons who had any account or claim audited by the board of supervisors of said county or the town auditors of the respective towns above named, at the last annual session thereof, together with the amount claimed and allowed thereon (so far as returned to me); that no account was audited at such session unless the same was duly verified, as required by law; that the items of the accounts of the members of said board are those contained in their several bills herewith published; that the annexed table of the equalized valuation of said county is the same adopted by said board; that the whole number of days that the said board were in session (including holidays and Sundays) was thirty-nine, and that the statement of mileage charged therein is correct to the best of my knowledge.

Dated , 188 .

CLERK.

\* If the compensation is *not* a fixed salary the *items* of the *per diem* charge should be inserted.

The above combines the various accounts and abstracts required to be published by the clerk, in the form in which they generally appear for publication, one certificate being used for the whole subject.

**§ 763. To Publish Reports as to Town Debts.**

See § 630, *ante*.

**As to County Debts,** see below.

**To Publish Resolutions Adopted under  
Laws of 1875, Chapter 482, Etc.**

See § 631, *ante*.

**To Publish Election Notices and Official Canvass.**

See § 625, *ante*.

## Session Laws.

See § 622, *ante*.

FORM OF CERTIFICATE FOR COPY OF ANY PAPER ON FILE IN HIS OFFICE.

STATE OF NEW YORK,  
COUNTY OF ONEIDA,  
OFFICE CLERK BOARD OF SUPERVISORS, } ss.

[L. s.] I have compared the preceding with the original thereof on file in this office, and hereby certify that the same is a correct transcript therefrom, and of the whole of said original.

.....,  
CLERK.

**§ 764. To Deliver Abstract of Poor.**—The supervisor of each town is required each year to report an abstract of the expenses relating to the poor in those counties where all of the poor are not a county charge. When the clerk receives such abstracts it is his duty to deliver the same to the county superintendent of the poor of his county, and if he neglects or refuses to deliver them, or certified copies thereof, or if he shall willfully make and deliver any false copy, he forfeits the sum of \$100, to be recovered by the district attorney in the name of the people of the State, for the benefit of the poor of the county.

**§ 765. To Serve Notice Relative to Abolishing Distinction as to the Poor.**—When the supervisors make an order abolishing the distinction between town poor and county poor, and decide to have all the poor a county charge, the clerk of the board must serve notice of such order immediately on the overseers of the poor of every town in the county, and also upon the clerk of each town, village or city within such county.

Id., 1857, §§ 21, 25.

See *ante*, "Support of the Poor."

**Bond of Superintendent of the Poor.**—Clerk's duties relative to.

See § 704, *ante*.

**§ 766. To Report Indebtedness of Counties, Towns and Villages.**—By the act to increase the duties of clerks of boards of supervisors, passed February 6, 1872, it is enacted that clerks of boards of supervisors of the several counties in this State shall, on or before the second Monday in December in each year, transmit to the comptroller by mail, in the form which shall be prescribed by the comptroller, a certificate or return of all the indebtedness of their respective counties, and of each town, village and ward therein.

Laws of 1872, chap. 17.

The clerk who shall refuse or neglect to make such return shall forfeit to the people of this State the sum of \$50.

Id., § 2.

**§ 767. To Deliver Statement of Railroad Taxes.**—The clerk of the board of supervisors (except in New York and Kings counties), within five days of the making out or issuing of the annual tax warrant by the board of supervisors, shall prepare and deliver to the county treasurer a statement showing the title of all railroad corporations in the county, as appears on the last assessment-roll of the towns or cities in such county, the valuation of the property, real and personal, of such corporations in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in their county.

Laws of 1870, chap. 506; 2 R. S. 1039.

**Telegraph, Telephone, Electric Light Lines.**—It shall be the duty of the clerk of the board of supervisors of

the several counties of this State, within five days after making out or issuing of the annual tax warrants by the board of supervisors of their respective counties, to prepare and deliver to the county treasurer, and in the city and county of New York, the receiver of taxes, a statement showing the title of all telegraph, telephone and electric light lines in such county as appear in the last assessment-roll of the town or ward in such county, the valuation of the property, real and personal, of such line in each town or ward, and the amount of tax assessed or levied on such valuation in each town or ward in the county.

Laws of 1886, chap. 659, § 4.

**§ 768. To Return Value of Estate.**—The clerk of the board of supervisors of the several counties in this State shall, on or before the second Monday in December in each year, transmit to the comptroller by mail, in the form which shall be prescribed by the comptroller, a certificate or return of the aggregate valued amount of real and personal estate in each town or ward, as corrected by the board of supervisors. The clerk who shall neglect or refuse to make such return shall forfeit to the people of this State the sum of \$50.

Laws of 1838, chap. 117.

The data for this report will be found in the report of the committee on equalization *as finally adopted* by the board of supervisors, except in counties having a board of equalization, in which case the report of the latter board will give the facts required.

**§ 769. Incorporated Companies—List, Statement and Taxes Thereof.**—As has been mentioned in the chapter on corporations (§ 413), the board of supervisors are required to transmit to the comptroller, *with the aggregate valuations* of real and personal estate in their county, mentioned in the preceding section, a statement showing the names of the several incorporated companies liable to taxation in such county; the amount of the capital stock paid in and secured to be paid in, by each; the amount of real and personal property of each as put down by the assessors or by them; and the amount of taxes assessed on each. In those counties in which there is no such company, the boards of supervisors shall certify such fact to the comptroller with their returns of the aggregate valuations of real and personal estate.

*Ante*, § 413.

This statement is generally made by the clerk from the report of the committee on incorporated companies when fully completed, and is transmitted to the comptroller upon blanks prepared and issued by that officer.

**§ 770. Where Collector of Taxes Refuses to Serve, Etc.**—If a collector refuse to serve, die, resign, or move out of the town or ward before entering upon or completing his duties, or shall be disabled from completing the same, a new collector may be appointed by the supervisor and any two justices of the peace. If a warrant to collect the taxes had been issued by the board of supervisors prior to the said appointment of the collector, and said warrant cannot be obtained by the new collector, a new one shall be made out by the clerk of the board of supervisors directed to the collector so appointed.

The law is set out in full at section 359.

**Duty Where Collector Neglects to Qualify.**

See § 358.

**§ 771. Grand Jury List.**—The list of grand jurors is generally presented to the board by the proper committee, but the selection of the persons *must* be the *act of the board*, not of the committee or the clerk.

The proper procedure has been given, *ante*, §§ 587 to 591.

A list of the persons so chosen, duly certified by the clerk, must be filed by him in the county clerk's office, *within ten days after* the first day of the *meeting* of the board of supervisors.

**§ 772. Grand Jury Drawn by Supervisors.**—Where a grand jury is ordered drawn for a court of sessions by the board of supervisors, a copy of the order, certified by the clerk of the board, must be filed with the county clerk at least twenty days before the term of the court; and when so filed, is conclusive evidence of the authority for drawing the jury.

Code of Criminal Procedure, § 227.

**§ 773. New Towns, Erection of.**—By chapter 194, Laws of 1849, section 3, the board may "erect" a new town in the county.

See "General Statutes," *ante*.

The notices signed by the chairman or the clerk are to be transmitted by the latter to the persons designated.

The law is given in full, *ante*, and explains itself.

**§ 774. Special Meeting, Clerk May Call.**—The clerk may call a special meeting of the board, at any time, on the written request of a majority of the supervisors.

*Ante*, Laws of 1838, chap. 314, 5.

He should give due notice thereof to the members.



**§ 775. School Tax.**—No clerk of the board of supervisors or other person who shall make out the tax list or assessment-roll of any town shall omit to include and apportion among the moneys to be raised thereby the amount required to be raised for the support of the common schools, by reason of the omission of the board of supervisors to pass a resolution for that purpose.

Laws of 1864, chap. 555, tit. 3; 2 R. S. 1147, § 2.

**§ 776. In Relation to a Seal.**—The board of supervisors of any county in this State may adopt a seal, and, when so adopted, the clerk of such board shall cause a description thereof, together with an impression therefrom, to be filed in the office of the county clerk and in the office of the secretary of State, and the same shall thereupon be the seal of the board of supervisors of such county.

Copies of all papers duly filed in the office of the clerk of the board of supervisors of any county, and transcripts from the books of records kept therein, certified by such clerk, with the seal of office affixed, shall be evidence in all courts and places, in like manner as if originals were produced.

Laws of 1855, chap. 249; 2 R. S. 934.

A duly certified copy of a resolution appointing an officer *or* committee would be the proper credentials of their right to act.

**§ 777. Summary to be Furnished County Treasurer.**—A copy of the "Summary" given the committee on ratio and apportionment should also be sent to the county treasurer for his use and for precaution. This will enable him to know what moneys have been appropriated, and to whom they belong.

The published journals of the proceedings of the board are generally issued in time for such use.

**§ 778. County and Town Orders.**—The payments of county and town charges are made by "orders;" the former drawn upon the county treasurer, the latter upon the supervisor of the town. They are made out by the clerk in an order-book as each committee's report auditing and allowing claims is adopted, or as each separate resolution making an appropriation is adopted. The book is like any ordinary check-book used in keeping an account with a bank, with "stubs" to correspond with the order issued. These orders are generally signed by the clerk, and *countersigned* by the chairman, who should examine each "order," amount, name, etc., and compare it with the proper appropriation before countersigning.

No "order" should be issued in which any erasures, alterations of figures, names or otherwise, have been made, and each order should be "to the order of" the claimant or his duly authorized assignee, and no such order should be issued until subsequent to the final adjournment of the board, for the reason that at any time during the continuance of such session, their action authorizing the issue of such order may be reconsidered, rescinded, or revoked.

**§ 779. To Transmit Proceedings to State Library.**—The clerk shall transmit to the State librarian a copy of the proceedings of the board, within twenty days after publication thereof.

Laws of 1877, chap. 102.

**§ 780. Assessors and Town Clerks Neglecting their Duties to be Reported to the Comptroller—Duty of Board of Supervisors.**—The boards of supervisors of the several counties, at every annual meeting, shall transmit to the comptroller the names and places of abode of the town clerks and assessors in their respective counties, who shall have willfully refused or neglected to perform the duties required of them in this chapter; and the comptroller shall thereupon give notice to the district attorneys of the proper counties, to the end that they may prosecute such delinquent town clerks and assessors for the penalties incurred by them.

2 R. S. 1049, § 2.

"This chapter," referred to above, is the one relating to assessment and taxation, *ante*, chap. 5.

**§ 781. Clerk Cannot be Appointed County Treasurer.**—No supervisor or clerk of the board of supervisors shall be appointed to or hold the office of county treasurer.

1 R. S. 863, § 13.

## CHAPTER XIV.

### OF THE POWER AND RIGHTS OF COUNTIES AS BODIES CORPORATE.

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| <p><b>Sec. 782.</b> General powers of a county as a body corporate.</p> <p><b>783.</b> Limitation of its corporate powers.</p> <p><b>784.</b> Proceedings by or against a county to be in name of supervisors; but conveyances made in any manner for the benefit of county good.</p> | <p><b>Sec. 785.</b> Powers of county as a body politic, to be exercised by board of supervisors, or in pursuance of a resolution by them adopted.</p> <p><b>786.</b> Each county to hold such part of the county lands as shall fall within its limits.</p> <p><b>787.</b> Personal property of county to be apportioned, and how.</p> <p><b>788.</b> Debts to be apportioned, and how.</p> |
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**§ 782.** Each county as a body corporate has capacity

1. To sue and be sued in the manner prescribed by law ;
2. To purchase and hold lands within its own limits and for the use of its inhabitants subject to the power of the legislature over such limits ;
3. To make such contracts and to purchase and hold such personal property as may be necessary to the exercise of its corporate or administrative powers ; and,
4. To make such orders for the disposition, regulation, or use of its corporate property, as may be deemed conducive to the interests of its inhabitants.

**§ 783.** No county shall possess or exercise any corporate powers, except such as are enumerated in this chapter ; or shall be specially given by law ; or shall be necessary to the exercise of the powers so enumerated or given.

**§ 784.** All acts or proceedings by or against a county in its corporate capacity shall be in the name of the board of supervisors of such county ; but every conveyance of lands within the limits of such county, made in any manner, for the use or benefit of its inhabitants, shall have the same effect as if made to the board of supervisors.

**§ 785.** The powers of a county as a body politic can only be exercised by the board of supervisors thereof, or in pursuance of a resolution by them adopted.

**§ 786. Of the effects of a Division of a County on its Corporate Rights and Liabilities.**—When a county seized of lands shall be divided into two or more counties, or shall be altered in its limits by the annexing of a part

of its territory to another county or counties, each county shall become seized to its own use, of such part of said lands as shall be included within its limits as settled by such division or alteration.

§ 787. When a county possessed of or entitled to money, rights and credits, or other personal property, is so divided or altered, such property shall be apportioned between the counties interested therein by the supervisors and county treasurers thereof, as to them, or a majority of them, shall appear to be just and equitable. They shall meet for that purpose at such time as shall be prescribed by the law making such division or alteration.

§ 788. Debts owing by a county so divided or altered shall be apportioned in the manner prescribed in the preceding section ; and each county shall thereafter be charged therewith, according to such apportionment.

2 R. S. 924.

## CHAPTER XV.

### ACTIONS AND PROCEEDINGS BY OR AGAINST.

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|---------------------|-------------------------|
| 1. Towns.           | 4. <i>Mandamus.</i> }   |
| 2. The supervisors. | 5. <i>Certiorari.</i> } |
| 3. Counties.        | State writs.            |

### BY AND AGAINST TOWNS.

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|---|--|
| SEC. 789. Town may sue or be sued.            | SEC. 793. When town may bring action against commissioner. |
| 790. How action, etc., to be brought.         | 794. Board of town auditors to audit and allow judgment.   |
| 791. Liability of town for defective highway. |  |
| 792. Judgment a charge upon town.             |  |

### ACTIONS, HOW BEGUN BY OR AGAINST TOWNS.

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| SEC. 795. Process to be served on supervisor.          | SEC. 798. Actions in favor of a town may be brought before a justice. |
| 796. Proceedings, how conducted.                       | 799. Actions for penalties for trespass on town lands.                |
| 797. Inhabitants, when competent witnesses and jurors. | 800. When court may order partition.                                  |

### BY OR AGAINST A SUPERVISOR.

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|---|---|
| SEC. 801. What actions may be brought against supervisor. | SEC. 809. When costs not allowed against supervisor.            |
| 802. An act for the protection of tax payers.             | 810. Judgment to be laid before board of supervisors.           |
| 803. How brought, by or against supervisor.               | 811. Judgment to be collected as taxes are.                     |
| 804. Substitution of successor in office in suit.         | 812. Board of supervisors required to levy tax to pay judgment. |
| 805. Counsel may be employed.                             | 813. Supervisors to pay judgment when.                          |
| 806. Judgments, costs, etc., when a town charge.          | 814. Decisions as to costs, judgments, etc.                     |
| 807. When execution may and may not issue.                |   |
| 808. Costs, when awarded against town or county.          |   |

### BY AND AGAINST COUNTIES.

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| SEC. 815. Actions by counties, when and how brought.  | SEC. 819. Actions for damages from riots.                    |
| 816. Controversies between counties.  | 820. Actions, how brought.                                   |
| 817. Relief from erroneous or illegal assessment and taxation on lands divided by county lines. | 821. When county may sue before justice.                     |
| 818. What actions will lie.   | 822. Process, how served; duty of chairman or clerk thereon. |
|   | 823. Judgment, how paid.                                     |

### STATE WRITS.

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| SEC. 824. Relator, when joined with people, etc. | SEC. 825. <i>Mandamus.</i> |
|  | 826. <i>Certiorari.</i>    |

### 1. BY AND AGAINST TOWNS.

§ 789. **Town May Sue or be Sued.**—Each town as a body corporate has capacity to sue or be sued in the manner prescribed in the laws of this State.

Whenever any controversy or cause of action shall exist between any towns of this State, or between any town and an individual or corporation, such proceedings shall be had either at law or in equity for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect as in other suits or proceedings of a similar kind between individuals and corporations.

Id. 840, § 1.

## § 790. How Action, Etc., to be Brought.

**1. By or Against Towns, in the Name of the Town.**—In all suits and proceedings the town shall sue or be sued by its name, *except where town officers* shall be authorized by law to sue in their *name of office* for the benefit of the town.

Id., § 2. See page 449, *post*.

If any supervisor shall neglect to account, or shall render a false account, or shall convert to his own use any money or securities which may come to his hands by virtue of his office, proceedings may be commenced against him in the name of the town of which he is supervisor, in the supreme court, by action or otherwise, by the justices of the peace and town clerk of said town, to compel him to render such account, or to recover any money or property of the town which he has not duly accounted for.

Id. 827, § 5, as amended by Laws of 1866, chap. 534.

**§ 791. Liability of Town for Defective Highway—Liability of Towns.**—The several towns in this State shall be liable to any person suffering the same, for all damages to person or property by reason of defective highways or bridges in such town, in cases in which the commissioner or commissioners of highways of said town are now by law liable therefor, instead of such commissioner or commissioners of highways.

Laws of 1881, chap. 700, § 1.

**§ 792. Judgment a Charge upon Town.**—Upon the recovery of any judgment, for any damage aforesaid, such judgment, together with the costs included therein, shall be and become a charge upon the town against which it is rendered, and shall be audited and paid in the same manner as other town charges.

Id., § 2.

**§ 793. When Town May Bring Action Against Commissioners.**—If the defect in such high-

way or bridge shall have been caused by the misconduct or neglect of the commissioner or commissioners of highways of the town in which the same may be situated, then and in such case the town against which any judgment shall have been recovered by reason of such defective highway or bridge may bring an action against such delinquent commissioner or commissioners of highways and recover the amount of such judgment.

*Id.*

**§ 794. Board of Town Auditors to Audit and Allow Judgments When Commissioners Have Acted in Good Faith.**—The board of town auditors of any town in this State shall have power to audit and pay, if they shall deem it just so to do, as a town charge, in the same manner as other town charges are audited and paid, any judgment already recovered and not paid, and any judgment which may be hereafter recovered against any commissioner or commissioners of highways of such town for damages to person or property arising from defective roads or bridges in such town, whenever such board of town auditors shall be satisfied that the commissioner or commissioners against whom the same was rendered have acted in good faith, and the defect causing such damage shall not have been caused by the willful misconduct or neglect of the commissioner or commissioners against whom such judgment shall have been recovered.

*Id.*, § 4.

Nothing in this act shall be construed to relieve any commissioner of highways in this State from liability to indictment or criminal prosecution in cases where by law they are now liable thereto.

*Id.*, § 5; 2 R. S. 1221.

See "Decisions," *post*, page 462.

This act is constitutional.

*Bidwell v. Town of Murray*, 40 Hun, 190.

A supervisor who has failed to account, or rendered a false account, or converted moneys coming to his hands by virtue of his office, is liable to an action therefor in the name of the town. (Laws of 1866, chap. 534, § 1.) An action will not lie against him in the name of his successor in office.

*Hagadorn v. Raux*, 72 N. Y. 583.

Where an assessment is not only unconstitutional and void, but has been so judicially declared, and the invalidity is such that it must appear upon the proof necessary to be made to sustain proceedings under it, it is not essential to the maintenance of an action to recover back moneys collected under the assessment, that it should first be judicially vacated.

An action for moneys had and received is maintainable against a town to recover moneys of another wrongfully taken by it and applied to its own use.

*Horn v. Town of New Lots*, 83 N. Y. 100, 101.

It is the duty of the town to provide means for the payment of its bonds lawfully issued. In case of failure to perform this duty, the holder of the bonds may maintain an action against the town thereon; and this, although by the act under which they were issued, it is made the duty of the board of supervisors of the county to impose and levy a tax to pay the bonds.

Marsh v. Town of Little Valley, 64 N. Y. 112.

The provision of the act of 1866 (Laws of 1866, chap. 534, § 1), amending the Revised Statutes in reference to the accounting of supervisors, by authorizing an action to be brought in the name of the town against a supervisor who has neglected to account, has rendered a false account, or has converted money coming to his hands, by virtue of his office, extends to cases which arose before, as well as to those occurring subsequent, to the passage of the act.

The remedy thus given is not restricted to cases where the delinquent is an incumbent of the office at the time of the commencement of the action, but authorizes proceedings against the present or any former supervisor of the town, either by *mandamus*, to compel him to account, or by action to recover any money in his hands unaccounted for.

In an action against a supervisor under said provision, a claim for services which he has presented to the board of audit, provided by the Revised Statutes but which has not been passed upon by it, is not a proper counter-claim. It is made the duty of the board to consider and determine such claims; and the only remedy of the supervisor is to enforce the performance of this duty.

By resolution passed by the town of G., a war committee was appointed for the purpose of procuring men to fill its quota under a call of the United States government for soldiers, of which committee the supervisor of the town was, by virtue of his office, made a member. In the performance of this duty the supervisor received and disbursed large amounts of money raised upon the bonds of the town. *Held*, that in so doing he acted as supervisor, not merely as a member of the committee, and was accountable to the town in the former capacity, and that an action was properly brought against him in the name of the town to recover a balance alleged to be in his hands not duly accounted for.

Town of Guilford v. Cooley, 58 N. Y. 116, 117.

The assessors and collector are not in any legal sense the agents of the town, in its corporate capacity, in the assessment and collection of taxes, and the town is not responsible for any mistake, or misfeasance, by them, in the performance of their duties.

Accordingly, where land not situate within the town but in an adjoining county was erroneously assessed by the assessors, and payment of the tax by the owner enforced by the collector of the town, *held*, that the town was not liable in an action by the owner to recover the amount of the tax.

Lorillard v. The Town of Monroe, 11 N. Y. 392.

The electors of town in town meeting have no power, by resolution or otherwise, to authorize commissioners of highways to bring an action in their own names, or in their name of office, for such injuries. Such a resolution, if passed at town meeting, would not bind the town.

Where a cause of action exists in behalf of a town, and no officer is by statute authorized to prosecute for such cause of action, the town meeting may direct such action to be brought, and may appoint an agent to prosecute it; but such suit must be brought in the name of the town.

Where the electors of a town, in their town meeting, directed the commissioner of highways to prosecute a turnpike company for entering upon and taking possession of a public highway and bridge in that town, and the commissioners accordingly brought a suit for that cause of action, and had judgment against them; *held*, that they could not sustain an action against the town to be reimbursed their costs and expenses or the costs recovered against them in that suit.

Cornell v. The Town of Guilford, 1 Denio, 510-511.

A town, by a resolution of town meeting, directed the supervisor "as supervisor" to bring an action. He brought the action in the name of the town. *Held*, that, as it was such an action as could not be brought in the name of the town



without authority, the action was not well brought, the direction of the town not authorizing a suit in the name of the town.

Town of Lyons v. Cole, 3 T. & C. 431.

Where, in pursuance of statutes (Laws of 1873, chap. 387; Laws of 1875, chap. 563) imposing upon the city of Rochester a system of water-works, "for the use of its inhabitants and the extinguishment of fires," lands were purchased and a reservoir constructed in the town of Rush, *held*, that the work was to be regarded as executed for the public benefit, and the property, therefore, as held for public purposes; so that, in the absence of an express legislative declaration authorizing it, it was not subject to taxation, and that a tax imposed thereon in said town was illegal and void.

Where, however, the said property was assessed by the town assessors, and the city paid the tax to the town collector, who paid it over to the county treasurer, by whom it was applied "in the same manner as other taxes assessed and collected in said town," *i. e.*, a portion paid to the authorities of the town, a portion to the proper State officers and the residue retained for county purposes, *held*, that an action could not be maintained against the town to recover back the tax, or that portion paid over to the town officers, as the town has no treasurer, and its officers to whom the money was paid do not represent it, their functions being prescribed by statute, and the money they received being expended in the performance of official duty.

City of Rochester v. Town of Rush, 80 N. Y. 302.

It does not necessarily follow from the fact that railroad commissioners, appointed under the act authorizing certain towns to issue bonds and take stock in aid of the L. O. S. R. R. Co. (Laws of 1868, chap. 811, as amended by the Laws of 1869, chap. 241), issued bonds without the requisite consent of tax payers having in fact been obtained as prescribed by the act, so as to make them valid obligations of the town, that they were guilty of official misconduct; the act (§ 2) makes the verified certificate of the assessors of the fact that the requisite consents have been obtained, the evidence upon which the commissioners are to act, and where it appears that they acted in good faith, in reliance upon the certificate, it is a complete justification.

Town of Ontario v. Hill *et al.*, 99 N. Y. 324.

Plaintiff issued its bonds, negotiable in form, to a large amount and in great numbers, under the act authorizing it to subscribe to the capital stock of the C. L. railroad (Laws of 1869, chap. 314), which provides (§ 2) that a certified copy of affidavits of the assessors of the town that the required consents of a majority of the tax payers of the town have been given, and the consents shall be presumptive evidence of the facts therein contained. In actions brought to restrain the holders of said bonds from transferring them and to have them delivered up and canceled, it appeared that while the affidavits and consents were in form sufficient, the consents of a majority of the tax payers were not in fact obtained, and that the proceedings for bonding the town had been reversed and annulled by judgment of this court (People, *ex rel.* v. Allen, 52 N. Y. 548), rendered after defendants became holders of the bonds. *Held*, that plaintiff having established the necessary preliminary point that the bond and the record of proceedings for their issue created a *prima facie* liability, and having established the other requisite facts was entitled to the relief sought; that the parties here, not having been parties to the proceeding in which said judgment was rendered, it was not binding upon and did not estop defendants from setting up the affidavits of the assessors as proof of the requisite consents, and so the record of reversal would not be a defense to any action on the bonds, and would not avoid the necessity on the part of the town of being at all times prepared with evidence to rebut the presumption afforded by the affidavit; and that plaintiff was entitled to relief from this burden and from vexatious litigation.

Town of Springport v. Teutonia Savings Bank, 75 N. Y. 397.

In December, 1883, the board of supervisors of Rensselaer county audited and allowed a bill presented to it, and thereafter, after signing the tax book and warrants for the collection of the taxes, adjourned *sine die*. On April seventh, the relators, upon an affidavit charging that the board had no jurisdiction to audit the

claim, and that the county treasurer threatened to pay it, obtained a writ of *certiorari* requiring the board to make a return of all their proceedings. *Held*, that the writ should be quashed, as the board had no power over the matter after the roll had been signed and the warrant delivered.

People, *ex rel.* Gale, v. Supervisors of Rensselaer Co., 34 Hun, 266.

## ACTIONS, HOW BEGUN BY OR AGAINST TOWNS.

### § 795. Process to be Served on Supervisor.—

In all legal proceedings against towns by name, the first process, and all other proceedings required to be served shall be served on the supervisor of the town ; and whenever any such suit or proceeding shall be commenced, it shall be the duty of the supervisor to attend to the defense thereof, and to lay before the electors of the town, at the first town meeting, a full statement of such suit or proceeding, for their direction in regard to the defense thereof.

1 R. S. 840, § 3.

§ 796. Proceedings, how Conducted.—Whenever any controversy or cause of action shall exist between any towns of this State, or between any town and an individual or corporation, such proceedings shall be had, either at law or in equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect as in other suits or proceedings of a similar kind, between individuals and corporations.

*Id.*, § 1.

§ 797. Inhabitants, When Competent Witnesses and Jurors.—On the trial of every action in which a town shall be a party or be interested, the electors and inhabitants of such town shall be competent witnesses and jurors, except that in suits and proceedings by and against towns, no inhabitant of either town shall be a juror.

*Id.*, § 4.

§ 798. Actions in Favor of a Town may be Brought Before a Justice.—Any action in favor of a town, which, if brought by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such town, in like manner, before any such justice ; but no action to recover a penalty given to a town shall be brought before any of the justices of the peace residing in the town, for the benefit of which the same is prosecuted ; but all such actions may be brought before any one of the justices of the peace residing in any other town in the same county.

*Id.*, § 5.

**§ 799. Actions for Penalties for Trespass on Town Lands.**—Whenever an action shall be brought to recover a penalty imposed for any trespass committed on the lands of a town, if it shall appear, on the trial thereof, that the actual amount of injury to such town lands, in consequence of such trespass, exceeded the sum of \$12.50, then the amount of the actual damages, with costs of suit, shall be recovered in such action, instead of any penalty for the same trespass, imposed by the town meeting; and such recovery shall be a bar to every other suit for the same trespass.

Id., § 6.

**§ 800. When Court May Order Partition.**—Whenever, by any decree or decision in any suit or proceeding brought to settle any controversy in relation to town commons or other lands, the common property of a town, or for the partition thereof, the rights of any town shall be settled and confirmed, the court in which such proceeding shall be had may partition such lands according to the right, as decided and settled.

Id., § 7.

## 2. WHEN BY OR AGAINST A SUPERVISOR.

**By a Supervisor.**—An action or special proceeding may be maintained, by the supervisor of a town, or the supervisors of a county, upon a contract lawfully made with those officers or their predecessors, in their official capacity; to enforce a liability created or a duty enjoined, by law, upon those officers, or the body represented by them; to recover a penalty or a forfeiture, given to those officers, or the body represented by them; or to recover damages for an injury to the property or rights of those officers, or the body represented by them; although the cause of action accrued before the commencement of their term of office.

Code of Civil Procedure, § 1926.

This section does not apply to a case where it is specially prescribed by law that an action may be maintained by or against the body represented by an officer designated in the section; but in such a case the prosecution or defense of the action, as the case may be, must be conducted by the persons then in office who represent that body.

Id., § 1928.

**§ 801. What Actions may be Brought Against Supervisor.**—An action or special proceeding may be maintained against a supervisor or board of supervisors upon any cause of action which accrues against them, or has accrued against their

predecessors, or upon a contract made by their predecessors in their official capacity and within the scope of their authority.

Id., § 1927.

Sections 1926 and 1927 of the Code of Civil Procedure, above given, do not apply to a case where it is specially prescribed by law that an action may be maintained by or against the body represented by an officer designated in those sections; but, in such a case, the prosecution or defense of the action, as the case may be, must be conducted by the persons then in office, who represent that body.

Id., § 1928.

An action to obtain a judgment preventing waste of or injury to the estate, funds or other property of a county, town, etc., may be maintained against any officer thereof, or any agent, commissioner, or other person acting in its behalf, by a citizen, resident therein, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid a tax therein. This section does not affect any right of action in favor of a county or town, or any public officer.

Id., § 1925.

**§ 802. An Act for the Protection of Tax Payers—Action to Restrain Unlawful Official Acts.**—All officers, agents, commissioners and other persons acting for and on behalf of any county, town, etc., in this State, and each and every one of them may be prosecuted, and an action or actions may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to any property, funds or estate of such county, town, etc., by any person whose assessment, or by any number of persons jointly, the sum of whose assessments shall amount to \$1,000, and who shall be liable to pay taxes upon such assessment or assessments in the county, town, village or municipal corporation to prevent the waste or injury of whose property the action is brought, or who have been assessed or paid taxes therein upon an assessment or assessments of the above-named amount within one year previous to the commencement of any such action or actions. Such person or persons, upon the commencement of such action, shall furnish a bond to the defendant therein, to be approved by a justice of the supreme court or the county judge of the county in which the action is brought, in such penalty as the justice or judge approving the same shall direct, but not less than \$250, and to be

executed by any two of the plaintiffs, if there be more than one party plaintiff, provided said two parties plaintiff shall severally justify in the sum of \$5,000. Said bond shall be approved by said justice or judge and be conditioned to pay all costs that may be awarded the defendant in such action if the court shall finally determine the same in favor of the defendant. The court shall require, when the plaintiffs shall not justify as above mentioned, and in any case may require two more sufficient sureties to execute the bond above provided for. Such bond shall be filed in the office of the county clerk of the county in which the action is brought, and a copy shall be served with the summons in such action. If an injunction is obtained as herein provided for, the same bond may also provide for the payment of the damages arising therefrom to the party entitled to the money, the auditing, allowing or paying of which was enjoined, if the court shall finally determine that the plaintiff is not entitled to such injunction. In case the waste or injury complained of consists in any board, officer or agent of any county, town, etc., by collusion or otherwise, contracting, auditing, allowing or paying, or conniving at the contracting, audit, allowance or payment of any fraudulent, illegal, unjust or inequitable claims, demands or expenses, or any item or part thereof against or by such county, town, etc., or by permitting a judgment or judgments to be recovered against such county, town, etc., or against himself in his official capacity, either by default or without the interposition and proper presentation of any existing legal or equitable defenses, the court may in its discretion prohibit the payment or collection of any such claims, demands, expenses or judgments, in whole or in part, or may enforce the restitution thereof, if heretofore or hereafter paid or collected, by the person or party heretofore or hereafter receiving the same, and also may, in its discretion, adjudge and declare the colluding official personally responsible therefor, and out of his property provide for the collection or repayment thereof, so as to indemnify and save harmless the said county, town, etc., from a part or the whole thereof; and in the case of a judgment, the court may, in its discretion, vacate, set aside and open said judgment, with leave and direction for the defendant therein to interpose and enforce any existing legal or equitable defense therein, under the direction of such person as the court may, in its judgment or order, designate and appoint. All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any

officer, board or commission acting for or on behalf of any county, town, etc., in this State, are hereby declared to be public records and shall be open, subject to reasonable regulations to be prescribed by the officer having the custody thereof, to the inspection of any tax payer. This section shall not be so construed as to take away any right of action from any county, town, etc., or from any public officer, but any recovery under the provisions of this act shall be for the benefit of, and shall be paid to the officer entitled by law to hold and disburse the public moneys of such county, town, etc., and shall, to the amount thereof, be credited the defendant in determining his liability in the action by the county, town, etc.

Laws of 1881, chap. 581; 1 R. S. 865.

§ See Code of Civil Procedure, § 1925.

Plaintiff, an incorporated seminary of learning, leased its school building and premises, at Saratoga Springs, to D. for a boarding-house during a summer vacation. The assessors of the town assessed the property to D., and after the expiration of the lease, a tax was levied thereon. The receiver of taxes for the town was proceeding to sell under the act of 1880 (Laws of 1880, chap. 68), which authorized him to sell any real estate upon which taxes are unpaid. Whereupon plaintiff brought this action to restrain the sale, and to vacate and set aside the tax as unauthorized by said act. On the trial it was claimed by the defendant that the assessment was void by reason of the indefiniteness of the description. The property was definitely described in the notice of sale. *Held*, that as, by the act, the receiver is directed to execute a conveyance to the purchaser, which is made (§ 8) presumptive evidence of regularity of all the proceedings including the assessment, a grantee under a sale would not be required to show a regular assessment in order to recover the premises, and his deed would be a cloud on the title; and that the action was maintainable.

Temple Grove Seminary v. Cramer, 98 N. Y. 121-2.

An action to vacate an audit, by a town board of audit, of a claim which the board had no authority to allow; or where the audit was fraudulent and collusive, and to restrain the collection of tax therefor, may properly be brought by a tax payer under the act of 1872 (Laws of 1872, chap. 161), "for the protection of tax payers."

The right to maintain an action under said act is not confined to cases where, before its passage, an equitable action could have been brought by the town for the same relief.

Osterhoudt v. Rigney *et al.*, 98 N. Y. 222.

In an action brought under the act "for the protection of tax payers" (Laws of 1872, chap. 161, amended by Laws of 1879, chap. 526), by tax payers of a town to vacate, on the ground of illegality or fraud, audits of town accounts made by the board of audit, and to restrain the levying of a tax for their payments, the persons in whose favor the audits were made are proper and necessary parties. The enumeration in said act of the persons against whom actions under it may be brought does not dispense with the necessity of joining all other persons who will be directly affected by the judgment, and are necessary parties to a complete determination of the controversy.

Osterhoudt *et al.* v. Board of Supervisors, etc., *et al.*, 98 N. Y. 239.

In an action by a tax payer of the town of A. to have certain bonds issued by said town adjudged illegal and void, it appeared that the town, acting in supposed accordance with statutory provisions (Laws of 1869, chap. 907, as amended by Laws of 1871, chap. 925), issued its bonds to pay for stock of a railroad corporation, which passed into the hands of innocent holders. The bonds were claimed by the

town to have been illegally issued, and so invalid. While suits were pending to enforce them, said town, under the act of 1880 (Laws of 1880, chap. 146), authorizing it "to issue new bonds pursuant to the provisions of Laws of 1878, chap. 75," and its amendments, to the amount and extent of its bonded indebtedness, issued the bonds in question in exchange for, and to retire the outstanding bonds, the new bonds drawing a lower rate of interest than the old ones. Said town at the time had no other "bonded indebtedness" than the original bonds issued as above stated. *Held*, that the action was not maintainable; that the town, having elected to compromise rather than to contest the validity of the old bonds, was estopped from thereafter questioning it.

Hills v. Peekskill Savings Bank *et al.*, 101 N. Y. 490.

Where the bonds of a town have been issued to a railroad corporation in payment for stock, by commissioners appointed under and by a judgment void for want of jurisdiction rendered in proceedings under the act authorizing "municipal corporations to aid in the construction of railroads," an equitable action is maintainable for the protection of tax payers, at the suit of a tax payer of the town, to restrain the negotiation, or payment, of the bonds and to compel their cancellation.

Metzger v. Attica & A. R. R., 79 N. Y. 171. See Ayers v. Lawrence, 59 id. 192.

When the supervisor of a town acting, under section 27 of chapter 179 of 1856, as "trustee of the gospel and school lot" improperly invests and thereby loses moneys belonging to such fund, an action to compel him to account and make good the loss thereby occasioned should be brought by his successor, who should describe himself in the title of the action as the trustee of the gospel and school lots.

Taylor v. Gurnee, 26 Hun, 624.

In a bond given by the supervisor of a town of Westchester county, under the provision of the statute requiring every supervisor to execute and deliver to the town clerk of his town, a bond conditioned for the faithful discharge of his duties, etc. (Laws of 1866, chap. 534, § 2, as amended by Laws of 1868, chap. 721, § 1), the person holding the office of town clerk at the time was named as obligee, he being described as "town clerk." and the penal sum being made payable "to the said town clerk, or his successor in office."

In an action upon the bond *held*, that the bond was not to the individual, but to the officer; and so was in compliance with the requirements of the statute and was valid.

Also *held*, that the action was properly brought in the name of the supervisor of the town.

Sutherland v. Carr *et al.*, 85 N. Y. 105.

An action may be brought by a supervisor, as such, to recover a balance remaining in the hands of a predecessor, as ascertained and certified by the auditors of town accounts, but not paid to his successor on demand.

This right of action in the name of the supervisor is conferred by 2 Revised Statutes, page 473, section 92 and is not taken away nor conferred upon the town by the Laws of 1866, chapter 534.

Gleason v. Youmans, 9 Abb. N. C. 107; affirmed, 13 Dig. 25.

A supervisor who, by the wrongful act of his associates, is excluded from being present at a meeting of the board, cannot, on that ground, maintain an action to enjoin other officers from proceeding to fulfill authority conferred upon them by the proceedings of the board at such meeting. His remedy should be directly against the offending supervisors.

Ely v. Connally, 7 Abb. (N. S.) 9.

Actions for fines and penalties under the "Compulsory Education Act" are to be brought in the name of the supervisor.

Laws of 1874, chap. 421, § 9.

Under the provision of the act (Laws of 1865, chap. 29, § 2) providing for a refund of bounties, the State, through its paymaster-general, settled with, and paid to, a committee, appointed by the board of supervisors of Cortland county, the amount claimed for excess of years furnished by the several towns thereof, including the thirty-one years so credited. In the schedules presented by the committee the thirty-one years were not credited to the town of S., but to other towns, defendant being credited with three years. The paymaster-general did not recognize the towns in making the payment, but kept his account with the county, using the schedule simply to ascertain the aggregate number of excess furnished from enlistments in the county. The committee, knowing of the claim of the town of S., by direction of the board of supervisors paid to defendant the sum received from the State for the three years so credited to it. In an action to recover the money so paid, *held*, that the committee received the refund as agents for the different towns; that the right to demand and receive it existed in the towns, not in the county, and the sum paid for the thirty-one years rightfully belonged to, and its payment discharged the claim of, the town of S.; that, in the absence of explicit evidence to the contrary, it could not be presumed that the State undertook to determine how the money paid to the committee should be distributed as between the towns, and that the action could be maintained.

Also *held*, that the action was properly brought in the name of the supervisor of the town of S.

Hathaway v. Town of Cincinnatus, 62 N. Y. 435.

Under the provision of the act (Laws of 1874, chap. 296), subjecting the property of the N. Y. & O. M. R. R. Co. to taxation, and appropriating the amount of the county taxes thereon, in any town which has issued bonds in aid of the construction of the road of said company, to such town, to be devoted to the payment of its bonds, after any such tax has been collected the moneys belong to the town, and any diversion thereof from their lawful object is an injury to the rights of the town, which may be protected by an appropriate action in its behalf.

The town is not confined to the remedy given by the act (§ 4), *i. e.*, an action against the collector and the sureties upon his bond.

The action on behalf of the town might, under the Revised Statutes (2R. S. 473, § 92), have been properly brought by the supervisor of the town, and may be so brought under the Code of Civil Procedure (§ 1926).

Where, therefore, the warrant issued to the collector of such a town required him to pay over the moneys so collected to the county treasurer, which command the collector obeyed, instead of paying the amount collected to the railroad commissioners of the town, as prescribed by the act (§ 3), *held*, that an action, as for moneys *had and received*, was properly brought by the supervisor of the town against the board of supervisors of the county to recover the amount so paid.

Bridges v. Board of Supervisors of Sullivan Co., 92 N. Y. 570-571. See Town of Lewis v. Marshall, 9 Abb. N. C. 104, note; affirmed, 56 N. Y. 663; Hand v. Supervisors, 31 Hun, 531.

The supervisor of a town is, in a general sense, its treasurer; he is entitled to receive all moneys raised for town purposes, except those which are expressly directed to be paid to the town officers having charge of highways and bridges, schools and the support of the poor.

1 R. S. (7th ed.), § 1, p. 826.

He is also directed to pay all judgments recovered against the town from any moneys in his hands which are not otherwise specially appropriated.

3 R. S. (7th ed.), § 106, pp. 2403-4.

The statute thus assumes that he is the legal custodian of the moneys of the town and chargeable with the duty, not only of receiving and keeping them, but also of guarding their disbursement, and also recognizes, to a certain extent, the corporate existence of towns and their capacity to hold property, to protect its possession, and to enforce their *quasi* corporate rights by appropriate action.

Bridges v. Board of Supervisors of Sullivan Co., 92 N. Y. 575.

**§ 803. How Brought By or Against Supervisor.**—In an action or special proceeding brought pursuant to



section 1926 or section 1927 of Code of Civil Procedure, heretofore referred to, the officer by or against whom it is brought must be described in the summons, or other process by which it is commenced, and in the subsequent proceedings therein, by his individual name, with the addition of his official title. An objection, growing out of an omission to join any officer who ought to be joined with the others, must be taken by the answer, or, in a special proceeding, before the close of the case, on the part of the defendant; otherwise it is waived.

Code of Civ. Pro., § 1929.

Where the averments in, and the frame of a complaint are such as to affix to the plaintiff a representative character and standing in the litigation, and to show that the cause of action, if any, devolved upon him solely in that character, the omission in the title to the action of the word "as" between the name of the plaintiff and words descriptive of his representative capacity, does not prevent him from claiming in that capacity.

Beers v. Shannon, 73 N. Y. 292; Stillwell v. Carpenter, 62 id. 689.

If the word "as" be not used, or its equivalent, such designation is merely a description of the person.

Id.

It is *safer* to entitle the action "A. B. *as* supervisor of the town of C."

Bennett v. Whitney, 18 Dig. 393; S. C., 94 N. Y. 302.

**§ 804. Substitution of Successor in Office in Suit.**—In such an action or special proceeding, the court must, in a proper case, substitute a successor in office, in place of a person made a party in his official capacity, who has died or ceased to hold office; but such a successor shall not be substituted as a defendant, without his consent, unless at least fourteen days' notice of the application for the substitution has been personally served upon him.

Code of Civ. Pro., § 1930. See Supervisor of Galway v. Stimson, 4 Hill, 136.

It is only "in a *proper* case" that the court will substitute a successor. Where it appears from the relation between the defendant and the new supervisor, and the attitude of the latter to the subject-matter of the litigation, that the application is made in the interest of the defendant, rather than of the town, it should be denied.

Farnham v. Benedict, 29 Hun, 44.

In an action brought by or against a commissioner of highways as such, his opponent, if successful, is entitled to a personal judgment against him and, therefore, his successor in office cannot be substituted in his place as a party, although his successor consents to be substituted.

Hitchman v. Baxter, 5 Browne's C. P. Rep. 226.

**§ 805. Counsel may be Employed.**—The supervisor may employ counsel to prosecute or defend. His expenses and services are a town charge.

**§ 806. Judgments, Costs, Etc., When a Town Charge.**—In all suits or proceedings prosecuted by or against towns, or by or against town officers in their name of office, costs shall be recoverable as in the like cases between individuals. Judgments recovered against a town or against town officers, in actions prosecuted by or against them in their name of office, shall be a town charge, and, when levied and collected, shall be paid to the person to whom the same shall have been adjudged. ,

1 R. S. 841, § 8.

For defective highways, see *ante*, § 791.

**§ 807. When Execution May and May Not Issue.**—An execution cannot be issued upon a judgment for a sum of money, rendered against an officer in an action or special proceeding, brought by or against him, in his official capacity, pursuant to this article, except where it is rendered against the trustee or trustees of a school district, or the commissioner or commissioners of highways of a town. In either of those cases an execution may be issued against and be collected out of the property of the officer, and the sum collected must be allowed to him, in the settlement of his official accounts, except as otherwise specially prescribed by law.

Code of Civ. Pro., § 1931.

**§ 808. Costs, When Awarded Against Town or County.**—In an action or a special proceeding brought in the name of the people of the State to recover money or property, or to establish a right or claim, for the benefit of a county or town, costs shall not be awarded against the people; but where they are awarded to the defendant, they must be awarded against the body for whose benefit the action or special proceeding was brought.

Id., § 3243.

**§ 809. When Costs Not Allowed Against Supervisor.**—Costs cannot be awarded to the plaintiff in an action against a school officer or a supervisor, on account of an act performed by him, by virtue of, or under color of his office; or on account of a refusal or an omission to perform a duty enjoined upon him by law, where his act, refusal or omission might have been the subject of an appeal to the State superintendent of public instruction, and where it is certified that it appeared, upon the trial, that the defendant acted in good faith. But this section does not apply

to an action for a penalty ; or to an action or a special proceeding to enforce a decision of the superintendent.

Id., § 3244.

**§ 810. Judgment to be Laid Before Board of Supervisors.**—If judgment be rendered for any debt, damages or costs against any town or the supervisor thereof, on account of the liability of such town, and such judgment be not suspended by writ of error or otherwise, or be not paid and satisfied before the next annual meeting of the board of supervisors of the county, a certified copy of the docket of such judgment, or the record thereof if required by such board, shall be laid before the board of supervisors of the county at some annual meeting thereof.

8 R. S. 2403, § 102.

**§ 811. Judgment to be Collected as Taxes Are.**—The board of supervisors shall add the amount of such judgment, together with interest thereon, from the time of recovery to the first Monday in February then next, and also the expenses of the certified copy of the docket or record of the judgment mentioned in the preceding section, to the tax to be laid upon the town against which, or against the officers of which, such recovery shall have been had ; which sums shall be assessed, levied and collected as other contingent charges of such town, and shall be paid by the county treasurer to the person recovering such judgment.

Id., § 103.

**§ 812. Board of Supervisors Required to Levy Tax to Pay Judgment.**—If a final judgment for a sum of money, or directing the payment of money, shall have been, or shall hereafter be recovered against any county or town within this State, and the same remains, or shall hereafter remain unpaid, and the execution thereof is not, or shall not be stayed as required by law, or if so stayed, the stay has expired, or shall hereafter expire, it shall be the duty of the board of supervisors, and the said board of supervisors is hereby empowered to assess, levy and cause to be collected at the same time and in like manner as other moneys for the necessary expenses of the county or town, as the case may be, are then next thereafter to be assessed, levied and collected, and in addition to the moneys now authorized by law to be assessed, levied and collected for that purpose, a sum of money sufficient to pay the said judgment with the interest thereupon, and the fees and expenses chargeable by law upon the execution, if any, issued to collect the same. The moneys so assessed and levied as

soon as collected and paid to the proper receiving and disbursing officer or officers, or so much thereof as may be necessary, shall, from time to time, be paid by him or them to the judgment creditor, administrator or assignee, or other person entitled to receive the same by reason of the said judgment, without any deduction for his or their fees or commissions.

Laws of 1880, chap. 554, § 1; 1 R. S. 870.

### **Limitation as to Amount shall not Apply to Moneys to be Raised Under this Act.**

No restriction or limitation imposed by law, as to the sum to be raised in any year in any city or village, shall apply to the moneys to be raised for the purposes specified in the last preceding section; but the said moneys shall be raised in addition to any sum so restricted or limited.

Id., § 2.

Section 3 is a special provision as to New York city.

### **§ 813. Supervisor to Pay Judgment, When.—**

If the supervisor of a town, against whom any judgment shall have been rendered, which shall not be suspended by writ of error or otherwise, have sufficient moneys in his hands belonging to his town, not specially appropriated, he shall be bound to pay the amount of such judgment and the interest thereon, upon the production of a certified copy of the docket thereof, or of the record, if required; and for a failure so to do he shall be personally responsible to the party in whose favor such judgment was obtained.

3 R. S. 2403, § 105.

If the recovery be had against a town in its own name the supervisor thereof shall in like manner and upon like evidence pay the amount thereof, with interest, out of any moneys in his hands belonging to such town, not specially appropriated; and for a failure to do so he shall be personally responsible for such amount to the party in whose favor such judgment was obtained.

Id., § 106.

### **§ 814. Decisions as to Costs, Judgments, Etc.**

For other decisions on this subject, see *ante*, "How Action to be Brought," etc., § 790.

An overseer of highways cannot, upon his own motion, continue to litigate an action brought against him for an official act, after judgment has passed against him on trial, and demand indemnity from the town for the costs thereafter incurred if the subsequent litigation should prove unsuccessful.

People, *ex rel.* Van Keuren, v. Board of Town Auditors, 74 N. Y. 310.

The provisions of the Revised Statutes declaring that "judgments against town officers in actions prosecuted by or against them in their name of office shall be a town charge" includes merely cases against a town officer where an act complained of was done by him in his official capacity; it does *not* include a case where an officer is sued and judgment obtained against him for damages resulting from a neglect of duty on his part.

People, *ex rel.* Loomis, v. Board of Town Auditors, 75 N. Y. 316.

If the supervisor has no funds, not specially appropriated, he is not personally responsible.

Overseers of Milan v. Supervisors, 14 W. 74.

The remedy of the judgment creditor, if the board refuse to audit and allow his judgment, is an application for a *mandamus*, not an action against the county, or the board.

Boyce v. Board of Supervisors, 20 Barb. 294.

When a judgment has been rendered by a court having jurisdiction of the parties and subject-matter, against a town or an officer, which is a *town charge* as prescribed by law, the auditing and allowing of the amount and interest is a mere ministerial act, not involving the exercise of judicial discretion.

Lower v. United States, 1 Otto, 536, cited in 24 Hun, 421, which see; Allaben v. Supervisors, 12 How. 50; Newman v. Supervisors, 45 N. Y. 676.

On a judgment *confessed* by an officer, it was held that the board are not concluded by the judgment; they have the right to go behind it and inquire whether the whole or any part of the cause of action is a county charge.

Gere v. Supervisors, 7 How. 255.

## As to Defective Highways.

A judgment against the commissioners of highways of a town, upon a contract for the repair of a highway, does not necessarily establish any liability on the part of the town.

The commissioners have no general authority to bind the town by their contracts, and no corporate duty is imposed upon it, in respect to the care of highways. The burdens assumed by it are voluntary, and the assumption must precede any authorized action on the part of the commissioners, save in the exceptional cases prescribed by statute. (Laws of 1858, chap. 103, § 1, as amended by Laws of 1865, chap. 442.)

People, *ex rel.* Everett, *et al.* v. Board of Supervisors, 93 N. Y. 397.

The provision of the statute making judgments by or against town officers, in actions prosecuted against them in their name of office, a town charge, refers only to actions brought by or against them upon contracts authorized by statute.

In order, therefore, to make a judgment against commissioners of highways a town charge, it must have been recovered upon a liability incurred by them acting within the scope of their authority, and in such case the claim therefor must be presented, passed upon and audited by the board of town auditors.

In proceedings to compel defendant, by *mandamus*, to levy and assess upon the town of K., or upon territory formerly included in that town, the amount of a judgment held by plaintiffs against the commissioners of highways of the town, the only proof was the judgment-roll, by which it appeared that the cause of action arose out of a contract for the repair of the highways of the town. *Held*, that to entitle relators to maintain the proceedings, it was essential for them to show a valid judgment against the town, or such a judgment against its commissioners as precluded it from disputing its validity; that no such judgment was established; and that an order granting the application for the writ was error.

People, *ex rel.* Everett *et al.*, v. Board of Supervisors, 93 N. Y. 398.

Commissioners of highways have no power to contract a debt against the town, by borrowing money for the repair of roads and bridges.

Accordingly, where commissioners of highways borrowed \$1,000, for this purpose, on a note purporting to bind them in their official capacity, *held*, that an action could not be maintained against their successors to recover the amount.

The commissioners are not bound to repair either roads or bridges until the necessary funds are provided.

*Barker v. Loomis*, 6 Hill, 463.

It is the duty of commissioners of highways to repair defective highways or bridges, after notice of their condition, with reasonable and ordinary care and diligence, if they have sufficient funds in their hands or authority to procure such funds; and neglect of this duty renders them liable in a civil action to any person specially injured thereby.

Actual notice of the defective condition of a highway is not necessary, where the circumstances are such that ignorance on the part of the commissioners is, in itself, negligence.

The issue being the fact of negligence, the motives, or good faith, of the commissioners are entirely immaterial.

The principle should be regarded as settled in this State, that public officers, whose duties are not judicial, are answerable in damages to any one specially injured by their careless and negligent performance, or omission to perform, the duties of their office.

*Hover v. Barkhoof*, 44 N. Y. 113.

In an action against commissioners of highways for an accident caused by a hole in a bridge, the referee found that none of the defendants had any knowledge prior to the accident that the bridge was out of repair, and that no willful omission of duty had been established upon the part of any of them. *Held*, that the report in favor of defendants must be set aside. Such commissioners owe to the public an active duty, the duty of inspection of highways within reasonable periods, and one question always is whether, under the circumstances, they were bound to know of the defect; and this, apart from any question of actual knowledge or willful neglect.

*Cousins v. Carncross*, 21 Dig. 435-6.

Chapter 700 of 1881, providing that the several towns in this State shall be liable to any person suffering damages by reason of defective highways or bridges, in cases in which the commissioners of highways were then liable therefor, instead of such commissioners, did not render the towns liable for damages theretofore occasioned by such defects in the highways or bridges, but only created and imposed such obligation upon them for damages to be sustained after its passage.

*Frasier v. Town of Tompkins*, 30 Hun, 168.

The statute requiring commissioners of highways to keep the bridges and highways in repair imposes upon them the duty of active oversight and constant vigilance, and requires them to exercise a reasonable degree of watchfulness in ascertaining from time to time the condition of the highways and bridges, and in preventing them from becoming dilapidated or dangerous.

The mere fact that they have not been notified of the existence of the defect does not necessarily relieve them from liability, to one who has been injured by reason of their failure to discover and repair the same.

*Bostwick v. Barlow*, 21 Hun, 177.

The liability of towns is not extended by the Laws of 1881, chapter 700, to cases in which the commissioners of highways were not liable prior to the passage of that act.

In an action against a town to recover damages for injuries alleged to have been caused by the negligence of its agents and servants in failing to repair a highway or bridge the complaint must allege that defendant had funds, or the means of acquiring the same, or that its highway commissioners had funds or means of acquiring them.

*Eveleigh v. The Town of Hounsfield*, 20 Dig. 210.

To relieve the commissioners of highways of a town from personal liability to one who has been injured by their neglect to repair a defect known by them to

exist in the highway, it is not sufficient to show that they had no funds on hand wherewith to cause the necessary repairs to be made, but it must also be shown that they had sought, through the proper channels, to procure the said funds; and their failure so to apply therefor will render them liable for the damages sustained by reason of such defect.

Warren v. Clement, 24 Hun, 472.

## 2. ACTIONS BY AND AGAINST COUNTIES.

**§ 815. Actions by Counties, When and How Brought.**—Each county as a body corporate may sue and be sued.

2 R. S. 924, § 1, subd. 1.

By section 1926 of the Code of Civil Procedure, it is provided that an action or special proceeding may be maintained by the supervisors of a county upon a contract lawfully made with those officers or their predecessors, in their official capacity, to enforce a liability created, or a duty enjoined by law, upon those officers or the body represented by them, to recover a penalty or forfeiture given to those officers or the body represented by them; or to recover damages for an injury to the property or rights of those officers or the body represented by them; although the cause of action accrued before the commencement of their term of office.

Code of Civ. Pro., § 1926.

**§ 816. Controversies Between Counties.**—Whenever any controversy or cause of action shall exist between any of the counties of this State, or between any such county and an individual or individuals, such proceedings shall be had, either at law or in equity, for the purpose of trying and finally settling such controversy, and the same shall be conducted in like manner, and the judgment or decree therein shall have the like effect as in other suits or proceedings of a similar kind between individuals and corporations.

2 R. S. 977, § 1.

A cause of action against the county, or against the board of supervisors, is not affected by the fact that different individuals compose the board at any time since the cause of action accrued, or since the action or proceedings were begun.

**§ 817. Relief from Erroneous or Illegal Assessments and Taxation on Lands Divided by County Lines.**

**Actions to Determine in What Counties Lands are Taxable.**—Any person who shall have heretofore owned, or shall hereafter own, a farm or lot of land which has been, or shall be, divided by the county line between two or more counties, which farm or lot shall have been, or shall be assessed, in whole or in part, in or for the same year or years in towns in said counties, and who shall have paid the taxes so imposed thereon in said counties, may commence an equitable action in the supreme court against said counties to determine in which of said counties said land was properly taxable for said year or years, to recover of the county or counties wherein said taxes have been or may be wrongfully collected, the amount thereof, with interest thereon from the time of the payment thereof, and for such other relief in the premises as to the court shall seem equitable and just.

Laws of 1870, chap. 325, § 1; 2 R. S. 1002.

**Actions, how Commenced, Etc.**—Said actions may be commenced by the service of a summons, or summons and complaint, upon the chairman of the boards of supervisors of the counties made defendant, each of whom shall have authority to employ counsel to appear for, and represent his county in said action. The court shall take cognizance of such actions, in the same manner as other civil actions, and shall render the proper judgment therein; and the chairman of such boards is authorized to verify pleadings or affidavits in such actions.

Id., § 2.

**Provisions of Code Applicable.**—All the provisions of the Code of Procedure, not inconsistent with this act, are made applicable to said actions, and to the judgment and subsequent proceedings therein, except that costs in such action shall not be recovered against any county, unless the plaintiff shall, before the commencement of said action, have applied to the board of supervisors thereof to refund such taxes.

Id., § 3; 2 R. S. 1002-3.

The provisions relating to the refunding of the taxes determined in favor of plaintiff have been given, *ante*, § 347.

The remedies given by this act shall not extend to assessments made more than three years next prior to the passage thereof.

Suits against a county can be brought only for such causes of action, or controversies (such as torts and the like) as cannot be settled and adjusted by the board of supervisors, in the exercise of their *ordinary* powers.

Brady v. Supervisors, 2 Sandf. 460; affirmed, 10 N. Y. 260.

The supervisors of a county, as such, are not a body corporate, and possess no powers as a corporation.

Id., 10 N. Y. 260.



"Such controversy" means such a claim or cause of action as cannot be settled and adjusted on the application of the party, in the exercise of the ordinary powers of the board, and which is not a county charge, until it passes into judgment.

*Id.*, 2 Sandf. 471.

A bill in chancery, in the nature of a creditor's bill, does not lie at the suit of a county, to enforce the payment of county taxes, where the warrant for collection has been returned to the county treasurer, for want of property whereon to levy.

*Durant v. Supervisors*, 26 W. 66.

No action can be brought against a county for a county charge. This power to audit and allow county charges is exclusive of all other authority over the subject, to this extent, at least, that, when exercised, it is subject to no review.

*People, ex rel. Outwater, v. Green*, 56 N. Y. 469.

See "Auditing of Account and County Charges," *ante*, chap. VIII.

The board of supervisors of a county are not a corporation; and as such board, and apart from the county, they are not liable to a suit. They can be sued only as representing the county; and to warrant a suit against them as representing the county there must be some duty of the county, and the case must be such that an action founded upon that duty is the appropriate remedy. But where there is a failure of duty by the supervisors only, not by the county, a writ of *mandamus* is the proper remedy.

*Boyce v. Supervisors of Cayuga*, 20 Barb. 294.

The legislature has the power to direct by what agency claims against a county shall be ascertained and adjusted, and by what officials the bonds of a county, authorized to be issued to provide means of payment therefor, shall be attested and issued. But the bonds, when issued, are the bonds of the county by which its credit and revenues are pledged. The debt is the debt of the county and not of the State, and the moneys realized upon the bonds are the moneys of the county and not of the State; and when stolen or procured by fraud from the county treasury, the county alone can maintain an action to recover the same, subject, however, like other municipal rights, to the control of the legislature.

*People of the State of New York v. Ingersoll*, 58 N. Y. 2, 2.

The board of supervisors are bound to provide funds to pay orders drawn by the superintendents of the poor and certificates given for services as jurors, and if the funds are wasted or lost, to provide others to replace them.

*Chemung Canal Bank v. Board of Supervisors of Chemung Co.*, 5 Denio, 517.

In an action under chapter 161, Laws of 1872, against the board of supervisors and the town auditors to set aside certain audits, the persons in whose favor the audits were made are necessary parties.

*Osterhoudt et al. v. Board of Supervisors of Ulster Co.*, 98 N. Y. 239.

As a proceeding to vacate an assessment is a special proceeding, it is governed by the limitation prescribed by the Code of Civil Procedure (§§ 388, 414), and a delay in moving, for a less time than there limited, is not fatal to the proceeding.

*In the Matter of Manhattan Savings Institution*, 82 N. Y. 142.

Even in cases where no discretion is vested in a board of supervisors in relation to an account presented to them, and a clear legal duty rests upon them to cause the whole amount to be levied, collected and paid as a county charge, which they refuse to perform, an action will not lie against the board of supervisors. The only remedy of the creditor is a writ of *mandamus* to compel them to perform that duty. To warrant a suit against a board of supervisors as representing the county, there must be some duty of the county; where the duty relied upon is a duty not of the county, but of the board of supervisors, no action lies.

*Boyce v. Supervisors of Cayuga Co.*, 20 Barb. 294.

No action lies for printing proceedings of supervisors where they have rejected the claim.

Adams v. Supervisors, 66 Barb. 368.

No action can be maintained against a county for a county charge.

People, *ex rel.* Outwater, v. Green, 56 N. Y. 466-469, and cases cited.

In each year from 1875 to and including 1879, the board of supervisors of the county of Cayuga included in the taxes imposed upon the taxable property of the city and town of Auburn, in that county, the whole amount of the fees and charges audited and allowed by the said board of supervisors to the sheriff for receiving, keeping and boarding prisoners committed to jail by the courts of special sessions and police justices in the said city, while the statute required that the said amounts should be assessed upon the taxable property of the county as a county charge. This action was brought by the plaintiff to recover the illegal amounts so added to the taxes imposed upon the property of the plaintiff's assignors, and by them paid to the city treasurer and tax receiver, by whom they were paid to the sheriff upon checks drawn by the supervisors of Auburn. *Held*, that as the board of supervisors had no statutory authority to impose these taxes upon the city, their action was wholly without jurisdiction, and that the plaintiff could maintain this action to recover the amounts so paid without first procuring the assessment to be vacated in proceedings instituted directly for that purpose. That as the plaintiff's claim was founded upon the illegal and wrongful action of the board of supervisors, it was not necessary for him to present it to that board for audit before bringing this action.

Ross v. Supervisors of Cayuga Co., 38 Hun, 20, 21.

Since the act of 1855 (Laws of 1855, chap. 437), upon return by the town collector of a tax, laid upon real estate, uncollected for want of goods and chattels of which to make the same, the land is to be classed as non-resident, as to such unpaid tax, and all proceedings for the collection thereof must thereafter be had as if it was the land of a non-resident pursuant to that act.

Where the board of supervisors assume to add to the amount of a tax so returned to the assessment-roll of *residents*, and thus charge it upon one who has succeeded to the occupation of the land assessed, their action is without jurisdiction and void, and the tax thus laid against him is illegal.

If such illegal tax is collected and paid into the treasury of a county, an action as for money had and received will lie against the county for its recovery.

The money having come to the treasury of the county by the wrongful act and with the knowledge of its officers, no demand is necessary before suit, nor is it necessary to present the claim therefor to the board of supervisors for audit and allowance.

Newman v. Supervisors of Livingston Co., 45 N. Y. 676.

The board of supervisors of a county can maintain an action to recover moneys fraudulently drawn from the treasury of the county, by a public officer, by means of fictitious claims, and converted to his own use or misapplied.

Supervisors of New York v. Tweed, 18 Abb. (N. S.) 152.

A county can only be made liable for money alleged to have been wrongfully demanded and collected, or had and received by it for the benefit of another, where the moneys have come to its treasury for its use, or where it has had, or might have had, the benefit thereof.

In pursuance of the provisions of the act appointing commissioners for draining certain lands in the town of Royalton, Niagara county (Laws of 1867, chap. 774), defendant caused the expenses to be assessed upon the owners of lands benefited, among whom was plaintiff. The assessment was levied and collected and paid over to the treasurer of the county, and by him paid to the commissioners, as prescribed by the act. The proceedings of the commissioners having been vacated on *certiorari*, this action was brought to recover the amount collected, as for moneys wrongfully demanded and collected by defendant, and by it had and received for plaintiff's use and benefit. *Held*, that the county, by its board of supervisors exercised simply an agency under the act; that the treasurer, in the receipt and disbursement of the money, acted as agent and treasurer of the commissioners,

not of the county; the money paid did not go into the county treasury, and was never, in any sense, received, appropriated by, or in the possession of defendant; and, therefore, that the action could not be maintained.

Dewey v. Supervisors of Niagara Co., 62 N. Y. 294.

After a claim against a county has been submitted to a board of supervisors for allowance, and has been examined and passed upon, no action will lie against the county to recover the same claim on the ground that the decision of the board was erroneous in respect to the amount due the plaintiff. Their action in the matter is conclusive.

Martin v. Supervisors of Greene Co. 29 N. Y. 645.

The county is not liable for the default or neglect of its officers.

DeGrauw v. Supervisors, 13 Hun, 381.

**§ 818. What Actions Will Lie.**—An action lies at the suit of a county to recover from a supervisor the amount of an illegal audit paid him.

Supervisors v. Ellis, 59 N. Y. 620.

The board of supervisors have no power to authorize an inquiry as to who are railroad commissioners of a town.

*In re* Faulkner v. Morey, 22 Hun, 379.

See *post*, “*Mandamus*” and “*Certiorari*,” also “Action by Tax Payers,” *ante*.

### **§ 819. Actions for Damages from Riots.**—

Whenever any building or other real or personal property shall be destroyed or injured in consequence of any mob or riot, the city or county in which such property was situated shall be liable to an action by or in behalf of the party whose property was thus destroyed or injured, for the damages sustained by reason thereof.

Laws of 1355, chap. 428.

Such action or actions may be brought and conducted in the same manner that other actions may be prosecuted by law, and the judgment may be appealed from in the manner now provided for appeals in civil actions; and whenever any final judgment shall be recovered against any such city or county in any such action the treasurer of said city or county shall, upon the production and filing in his office a certified copy of the judgment-roll, pay the amount of such judgment to the party or parties entitled thereto, and charge the amount thus paid to said city or county.

*Id.*; 1 R. S. 860.

No person or corporation shall be entitled to recover in any such action, if it shall appear upon the trial thereof that such destruction or injury of property was occasioned, or in any manner aided, sanctioned or permitted by the carelessness or negligence of such

person or corporation ; nor shall any person or corporation be entitled to recover any damages for any destruction or injury of property as aforesaid, unless such party shall have used all reasonable diligence to prevent such damage, and shall have notified the mayor of such city, or the sheriff of such county, immediately after being apprised of any threat or attempt to destroy or injure his or their property, by any mob or riot, of the facts brought to his knowledge ; and upon the receipt of such notice it shall be the duty of such officer to take all legal means to protect the property attacked or threatened ; and any such officer or officers who shall refuse or neglect to perform such duty shall be liable to the party aggrieved for such damages as said party may have sustained by reason thereof, provided said party shall elect to bring his action against such officer instead of such city or county.

Id.

Nothing in this act shall be construed to prevent any person or corporation whose property has been injured or destroyed by any mob or riot, from having or maintaining an action against each and every person engaged or in any manner participating in such riot or mob.

Id.

No action shall be maintained under the provisions of this act unless the same shall be brought within three months after the loss or injury.

Id.

In an action under this statute, if the plaintiff was notified beforehand of threats to destroy the property in question by a mob, and neglected to notify the sheriff, he cannot recover.

Loomis v. Supervisors, 6 Lans. 269.

This act is constitutional.

Darlington v. Mayor, 31 N. Y. 164.

Notice to the public officers will not be required, when the party injured had no information in respect to which to give the proper notice.

Ely v. Supervisors, 36 N. Y. 297.

It is no defense to such action that the houses destroyed were kept by the plaintiff as bawdy-houses and as a rendezvous of thieves, robbers and murderers, etc.

Id.

A claim for such damages need not be presented to the board before bringing suit.

See *ante*, "Torts."

McClure v. Supervisors, 4 Abb. N. S. 203 ; S. C., 33 How. 202.

**§ 820. Actions, how Brought.**—In all such suits and proceedings the county shall sue, or be sued, in the name of the board of supervisors, except where county officers shall be authorized by law to sue in their name of office for the benefit of the county.

2 R. S. 977, § 2.

**§ 821. When County may Sue Before Justice.**—Any action in favor of a county, which, if brought by an individual, could be prosecuted before a justice of the peace, may be prosecuted by such county in like manner before any such justice.

Id., § 5.

The individual supervisors should not be named.

Hill v. Supervisors, 12 N. Y. 52.

**Witnesses and Jurors.**—On the trial of every action in which a county shall be interested, the electors and inhabitants of such county shall be competent witnesses and jurors.

2 R. S. 977, § 4.

**§ 822. Process, how Served ; Duty of Chairman or Clerk Thereon.**—In all legal proceedings against the board of supervisors, the first process and all other proceedings requiring to be served shall be served on the chairman or clerk of the board of supervisors ; and whenever any such suit or proceeding shall be commenced, it shall be the duty of such chairman or clerk to lay before the board of supervisors, at their next meeting, a full statement of such suit or proceeding, for their direction in regard to the defense thereof.

Id., § 2.

**Judgments and Costs, how Paid.**—In all suits and proceedings prosecuted by or against counties, or by or against county officers, in their name of office, costs shall be recoverable as in like cases between individuals. Judgments recovered against counties, or against county officers, in actions prosecuted by or against them in their name of office, shall be county charges, and when levied and collected, shall be paid to the person to whom the same shall have been adjudged.

Id., § 6.

The same principles apply in these cases as in those against town officers.

See "Judgment and Costs Against Towns," page 462, *ante*.

**§ 823. Judgment, how Paid.**—If judgment be rendered for any debt, damages or costs against the board of supervisors of a county on account of the liability of such county, and such judgment be not suspended by writ of error or otherwise, or be not paid and satisfied before the next annual meeting of the board of supervisors of the county, a certified copy of the docket of such judgment, or the record thereof, if required by such board, shall be laid before the board of supervisors of the county at some annual meeting thereof. The board of supervisors shall add the amount of such judgment, together with the interest thereon from the time of recovery to the first Monday in February then next, also the expenses of the certified copy of the docket or record of judgment mentioned in the preceding section, to the tax to be laid upon the county; which sums shall be assessed, levied and collected as other contingent charges of such county, and shall be paid by the county treasurer to the person recovering such judgment.

§ R. S. 2403, §§ 102, 103.

But if the treasurer of the county against which or against whose officers such judgment shall be had, have sufficient moneys in his hands belonging to such county, not otherwise specifically appropriated, he shall be bound to pay the amount of such judgment, upon the production of a certified copy of the docket thereof, or of the record, if required; and if he shall fail to do so on demand, he shall be personally liable for the amount of such judgment with the interest, to be recovered in an action by the party in whose favor such judgment was rendered, or his representatives.

Id., § 104.

In an action or special proceeding, brought in the name of the people of the State to recover money or property, or to establish a right or claim, for the benefit of a county, costs shall not be awarded against the people; but when they are awarded to the defendant they must be awarded against the body for whose benefit the action or special proceeding was brought.

Code of Civil Procedure, § 3243.

If the board refuse or neglect to levy the amount of judgment and costs, *mandamus* lies against them.

See *post*, "*Mandamus*."

In December, 1883, the board of supervisors of Rensselaer county audited and allowed a bill presented to it, and thereafter, after signing the tax-book and warrants for the collection of the taxes, adjourned *sine die*. On April 7, the relators, upon an affidavit charging that the board had no jurisdiction to audit the claim, and that the county treasurer threatened to pay it, obtained a writ of *certiorari* requiring the board to make a return of all their proceedings. *Held*, that the writ

should be quashed, as the board had no power over the matter after the roll had been signed and the warrant delivered. (*People, ex rel. Gale, v. Supervisors Rensselaer Co.*, 34 Hun, 266.) The powers exercised by boards of audit are judicial in their nature. (*Veeder v. Superintendents*, 5 Denio, 564.) A *certiorari*, therefore, lies to review their action, and as it concerns the public interests, any citizen who may be affected by their proceedings may, we suppose, be relator. (See *People v. Collins*, 19 Wend. 56.) But not only is the issuing of the writ discretionary, but to be effectual it must be prosecuted while the board of audit has jurisdiction of the proceedings. Its jurisdiction of accounts presented for audit terminates on the delivery to the supervisor of the schedule of audited accounts, and after that has been done, *certiorari* directed to the board would be fruitless; nor would the writ lie to the board of supervisors, for the reason that that board exercises no judicial function in levying a tax for town charges, but under the statute performs a purely ministerial duty. (*People v. Supervisors, etc.*, 1 Hill, 195.)

*Osterhoudt v. Rigney et al.*, 98 N. Y. 229, 230.

Under the provision of the act authorizing the town of Springport, Cayuga county, to subscribe for stock of the Cayuga Lake Railroad Company (Laws of 1869, chap. 314, § 2), which makes an affidavit of a majority of the assessors of the town, to the effect that a majority of the tax payers owning a majority of the taxable property had consented thereto, a condition precedent to issuing the bonds of the town, and makes the affidavit proof of such consent, the affidavit is in the nature of a judgment, and the proceedings of the assessors in arriving at their decision are reviewable upon *certiorari*.

It appearing by the return of the assessors to a writ of *certiorari* that before the making of their affidavits, revocations of the consent executed by the tax payers who had before signed the consent were served upon the assessors, but were disregarded by the majority of them, who included in their computation the names and property of those thus revoking. *Held*, that the consent in this case was analogous to the petition under the general act for bonding towns in aid of railroads, and that the signers had a right to withdraw and revoke their consent at any time prior to the making of the affidavit by the assessors. Also *held*, that this error could only be obviated by showing that had those revoking been excluded, the requisite number still remained.

*People, ex rel. Yawger, v. Allen et al.*, 52 N. Y. 538.

A writ of *certiorari* can be granted only at a general or special term of the supreme court.

*People, ex rel. Burhans et al., v. Board of Supervisors of Ulster Co.*, 19 Dig. 208.

Defendant, in December, 1878, issued its warrant to the collector of the town of F., for the collection of the annual tax levy on the town, which included items for the payment of an installment of principal and interest on bonds of the town issued to pay for a highway improvement. On January 6, 1879, an order was granted for defendant to show cause why a writ of *certiorari* should not issue, and on February 4, 1879, the writ was issued and judgment entered directing that the said items be stricken from the tax roll and the warrant amended accordingly. *Held error*; that the jurisdiction of defendant and its power to amend the roll terminated with the levy of the tax and the delivery of the roll and warrant to the proper officer; that neither the roll nor the warrant was before the court, and the directions in the judgment were wholly unavailing.

*People, ex rel. v. Supervisors of Queens Co.*, 82 N. Y. 275-6.

The action of a board of supervisors in delegating to a committee the power to locate and purchase a site for a "Children's Home" where, in the judgment of such committee, the interests of the county would be best observed, and to incur on behalf of the county an indebtedness therefor, and for the erection of a building, etc., is legislative in its character and not reviewable by *certiorari*.

It seems, that such action, together with all other and further proceedings, whether by the board or by the committee (including the issuing of bonds), having in view the carrying of such action into effect, is void.

*People v. Supervisors of St. Lawrence Co.*, 25 Hun, 131.

Writ of *certiorari* to review an erroneous assessment must issue before the roll has been delivered to the board of supervisors.

*People, ex rel. Porter, v. Tompkins*, 40 Hun, 228.

## STATE WRITS.

The writ of *mandamus* and the writ of *certiorari* to review the determination of an inferior tribunal are styled State writs.

Code of Civ. Pro., § 1991.

**To be Under Seal of the Court.**—A State writ must be issued under the seal of the court by which it is awarded.

Id., § 1992.

**§ 824. Relator, when Joined with the People, Etc.**—A State writ must be issued in behalf of the people of the State; but where it is awarded upon the application of a private person it must show that it was issued upon the relation of that person. The officer or other person against whom the writ is issued shall be styled the defendant therein.

Id., § 1994.

The practice and proceedings in these cases pertain to the legal profession rather than to the supervisors, and are, therefore, omitted.

The following decisions bear upon the duties of the latter, and are inserted for that purpose only.

### § 825. Mandamus.

If a board of supervisors choose to reject a claim, when fully proved, it is the same as a refusal to act at all, and a *mandamus* will be allowed to compel them to do what the statute commands them to do.

People v. Supervisors of Herkimer Co., 57 Barb. 452.

Where there is a moral obligation on the part of a county to refund money unjustly received for taxes, the legislature has the right to pass a law to compel the board of supervisors to perform that duty.

Id.

The assessors of two towns in Delaware county assessed certain rents reserved on leases in fee and payable to a non-resident, at the full value of the principal sum represented by the leases, while they assessed the remaining property in the towns at not over one-third of its value. *Held*, that the board of supervisors had, under the Laws of 1858, chapter 357, no power to correct such inequality, so as to make the assessment just, and that the refusal of such board to interfere with the assessment, upon the petition of the owner of the rents, was not error for which a *mandamus* would be allowed.

People v. Supervisors of Delaware Co., 60 N. Y. 381.

*Mandamus* will not lie to the clerk of a board of supervisors.

Matter of Gardner, 68 N. Y. 467.

Where a clear legal duty devolves upon an officer, or upon a board of officers, which he, or it, refuses to perform, a *mandamus* will lie to compel the performance of that which the law requires to be done.

People, *ex rel.* Millspaugh, v. Bd. of Town Auditors, 1 How. (N. S.) 224.

A claim presented to a board of supervisors who permit their session to expire without taking any action on it, apparently for the reason that they deem it



illegal, is to be regarded as rejected, so far as to permit a *mandamus* to compel its allowance.

People v. Supervisors of Richmond Co., 20 N. Y. 252.

Where the board of supervisors refuse to examine the accounts from some cause other than errors in the accounts or want of proof as to the items, a *mandamus* lies to compel them to proceed with an examination and audit.

Hasbrouck v. Supervisors of New York Co., 21 How. 322.

Where supervisors refuse to entertain and audit a claim on the ground that they have no power to allow it, a *mandamus* lies to compel them to entertain the claim, but the court will not control their discretion, but only compel them to exercise it.

People v. Supervisors of Cortland Co., 24 How. 119.

Where officers have a discretion to allow or reject a claim, a *mandamus* does not lie to compel its allowance.

Hutchinson v. Commissioners of Canal Fund, 25 Wend. 692.

Where a bill is presented, for services rendered to the county, the board of supervisors, unless the compensation for such services be fixed by law, authority, custom or binding contract, have to consider and pass upon the charges, and allow such sum as in their judgment is right and proper. In such cases they have a *discretion*, which will not be interfered with by *mandamus* directing how that discretion shall be exercised.

People v. Supervisors of Cortland Co., 58 Barb. 139; S. C., 40 How. 53.

Where, owing to a dispute as to the boundary line, the real estate of a person is assessed in two towns, proceedings by *mandamus* may be maintained against the board of supervisors of the county in case of its refusal to act to compel such board to ascertain and determine the amount which the person is equitably entitled to receive back, and from which of the towns as authorized by Laws of 1873, chapter 119. The fact that the assessors of one of the towns had no jurisdiction to make the assessment, and that the relator has a cause of action against them, does not deprive him of the right to proceed by *mandamus*.

People v. Supervisors of Essex Co., 70 N. Y. 229.

A writ of *mandamus* is the appropriate remedy by which the common council may be required to consider the estimate and vote the amount thought necessary to carry out the law.

A citizen and a tax payer has the power and right to apply for the writ.

People, *ex rel.* Wright, v. Common Council, 2 How. (N. S.) 61.

Where the duty to be performed by the board of supervisors is *judicial*, they may be compelled, by *mandamus*, to meet and decide on the matter, but cannot be controlled as to the manner in which they shall decide; where the duty is ministerial, they may be compelled to do the act which they are charged with unlawfully refusing to do.

People v. Taylor, 30 How. 78.

It is well settled, that where the supervisors have a discretion in the performance of their duty, and proceed to exercise it, that discretion cannot be controlled by *mandamus*. But if they refuse to act or to entertain the question for their discretion in cases where the law enjoins upon them to do the act required, the court may enforce obedience to the law by *mandamus* where no other remedy exists.

Hull v. Supervisors of Oneida Co., 19 Johns. 259; People v. Supervisors of Albany Co., 12 id. 414.

Where a board of supervisors of a county refuse to allow a claim, on the ground that it is not a county charge, when by law it is a county charge, a *mandamus* lies to compel them to admit it as such, or in other words, set them in motion, without controlling the exercise of their judgment and discretion as to the amount to be allowed.

Hull v. Supervisors of Oneida Co., 19 Johns. 259.

If, however, the supervisors, in the exercise of their discretion, disallow too much, a *mandamus* will not lie.

People v. Supervisors of Albany Co., 12 Johns. 414.

After supervisors have apportioned the taxes among the towns, a *mandamus* lies to compel them to issue warrants to collectors.

People v. Supervisors of Schenectady Co., 35 Barb. 408.

A *mandamus* will not lie to compel a board of supervisors to audit the bill of counsel appointed by the court to defend a prisoner, for services and expenses, since such a claim is not a county charge.

People v. Supervisors of Albany Co., 28 How. 22; approved, People v. Supervisors of Niagara Co., 78 N. Y. 622; People, *ex rel.* Brown, v. Supervisors of Onondaga Co., 3 How. (N. S.) 1.

It is the duty of the board of town auditors to pass specifically upon *each* separate item of a claim presented for audit.

An arbitrary reduction from the gross amount of a bill for various items of services, the compensation for which is regulated by statute, without passing upon and disallowing any specific item, is not an audit.

People, *ex rel.* v. Town Auditors of Elmira, 82 N. Y. 80.

A county board of commissioners of excise has power to employ an attorney to conduct the prosecution for penalties, which they are authorized to institute, and as it acts as the agent of the county in so doing, the claims for such services are a county charge.

An account for such legal services must be presented to the board of supervisors of the county, and must be audited and allowed by them; but the amount to be allowed, in the absence of express contract or statute, is somewhat in their discretion, but where the same are legally chargeable to the county, it is the duty of the board in good faith to audit them, and on their refusal to act, a *mandamus* is the proper remedy to compel them.

Where a board of supervisors has once considered a claim and audited and allowed it at a certain amount, a *mandamus* cannot issue to compel it to audit the claim anew and allow it at a greater amount, but where there are distinct and separate items in the account, the board of supervisors can no more wholly reject or refuse to audit one of those items, which is a legal charge, on the ground that it is not legal, than they can reject for that reason a whole account, and a *mandamus* will go to compel such audit.

What should be the form of a *mandamus* in such cases stated by FOLGER, J.

People v. Supervisors of Delaware Co., 45 N. Y. 196-7.

It is the fixed and established rule of this State that every citizen has a right to compel the performance by public officers of the duty imposed upon them of executing the laws of the State, which are enacted for the benefit of the community.

People, *ex rel.* Boltzer, v. Daley, 87 Hun, 461.

The relator, pursuant to an order of the special term of the supreme court, published in his newspaper the official notices of the appointment of the several terms of the supreme court and courts of oyer and terminer and of the general terms of the third judicial district. A bill therefor, duly verified, having been presented by him to the board of supervisors for audit, and by it disallowed, the relator moved for a peremptory *mandamus* to compel the allowance of his bill. *Held*, that the motion was properly denied.

People, *ex rel.* Cole, v. Supervisors of Greene Co., 39 Hun, 299.

A temporary injunction to restrain the collection of a tax is properly granted, where it appears that the property sought to be taxed belongs to a corporation organized for the same object intended to be fostered by the exemption of almshouses and poor-houses from taxation.

New York Infant Asylum v. Supervisors of Westchester Co., 81 Hun, 116.

Where a contract was entered into with a municipal corporation to furnish it with water for a compensation, *held*, that the remedy against it was by action,

and not by *mandamus*, where, though the contract furnished a rule by which the amount of compensation might be ascertained, yet the taking of proofs was necessary to establish the data to which the rule was to be applied.

Utica Water-works Co. v. City of Utica, 31 Hun, 426.

Under the provision contained in Laws of 1874, chapter 323, that in all proceedings before the governor for the removal of any county officer upon charges preferred against him, all the costs and expenses thereof shall be a county charge upon such county, and shall be audited and allowed by the board of supervisors thereof, the board of supervisors has power, when a claim is presented to it thereunder, to examine the items thereof and determine whether or not such costs and expenses were reasonable, and whether or not they were necessarily and properly incurred; and as to these matters the court will not control the discretion of the board by writ of *mandamus*.

It seems that the board of supervisors has power to submit to arbitration the validity and reasonableness of a claim made against the county.

People, *ex rel.* Benedict, v. Supervisors, 24 Hun, 413-4.

The board of supervisors of Montgomery county provided a proper and convenient room and furniture for the use of the surrogate in the county court-house, at Fonda, and refused to provide one at Amsterdam, when requested so to do by the surrogate. Thereupon the latter made an order establishing the office at Amsterdam, and directed the sheriff to furnish a suitable office and furniture therefor, at Amsterdam. Upon an application to compel the board of supervisors to pay the rent and expenses thereby incurred, *held*, that as the board had provided a proper office and furniture therefor, it could not be compelled to pay for any other.

People, *ex rel.* Westbrook, v. Supervisors, 34 Hun, 599.

The provision of the act of 1873, in reference to the equalization of taxes (Laws of 1873, chap. 327, § 1, amending the act, Laws of 1859, chap. 312), providing that an appeal made by a supervisor, in behalf of his town, from any decision of the board of supervisors in the equalization and correction of assessment-rolls, should be null and void in case the determination thereof was not made and filed with the clerk of the board before the commencement of the next annual session, was repealed by the provision of the act of 1876 (Laws of 1876, chap. 49, § 3), declaring that the State assessors shall certify their determination on such an appeal to the board of supervisors, "and forward the same by mail within ten days thereafter, to the clerk of said board."

Where, therefore, a decision was certified and forwarded by mail to the board within ten days after it was made and signed by the State assessors, but not until after the commencement of the next annual session, and the board omitted to carry the decision into effect, *held* that a *mandamus* would lie to compel the execution of such decision. Also *held*, that the fact that the supervisors of several towns joined as petitioners for the writ was not a valid objection.

People, *ex rel.* v. Board of Supervisors of Ontario Co., 85 N. Y. 323-4.

Where a town against which a judgment has been recovered is thereafter divided into two or more towns the board of supervisors cannot be compelled by *mandamus* to levy the amount of the judgment upon the land left in the town against which the judgment was recovered, and that portion of the land (formerly in the old town) which was transferred to another town.

No towns (certainly none except the town against which the judgment was recovered) can be charged therewith, until the debt has been apportioned among them as provided in article 2, chapter 11 of part 1 of the Revised Statutes.

The statute contemplates that the apportionment shall be between the towns, and does not intend that an apportionment shall be made upon only the property within the territorial limits of the altered or divided town.

People, *ex rel.* McKeuzie, v. Supervisors, 30 Hun, 148.

A judgment creditor of a town which has been divided under the act of 1872 (Laws of 1872, chap. 316) is not entitled to a *mandamus* requiring the board of supervisors of the county to levy and assess the amount due upon the territory formerly included in the town.

It seems that the remedy of the creditor is by *mandamus* against the officers of the towns which have any portion of the territory of the old town, requiring them to meet and discharge the duties devolved upon them by the provisions of the Revised Statutes, which provisions are at least, in the first instance, exclusive, and must be pursued.

People, *ex rel.* v. Board of Supervisors of Ulster Co., 94 N. Y. 268.

A claim had been presented to a board of supervisors, arising under a statute which gave them no discretion to disallow it, and the amount had been fixed and determined by the board, but not collected and paid; the statute authorizing the claim was then repealed. *Held*, that no judicial determination of the board had been defeated by the repeal, but all the proceedings of the board fell with the repeal, and *mandamus* would not lie to compel the board to levy and collect a tax to pay the claim.

People v. Supervisors, 67 N. Y. 109.

*Mandamus* is the appropriate remedy to compel supervisors to audit, levy and collect money which is by statute made a county charge.

People v. Supervisors of Columbia Co., 10 Wend. 363.

Also, to compel supervisors to audit and allow the claims of county officers for expenditures incurred in the discharge of their official duties.

Where a board of supervisors have a discretion to determine the proper amount to be allowed for services rendered the county, and have once acted and exercised that discretion, a *mandamus* will not lie to compel them to act further.

People v. Supervisors of St. Lawrence Co., 30 How. 173.

Where, owing to a dispute as to the boundary line, the real estate of a person is assessed in two towns, proceedings by *mandamus* may be maintained against the board of supervisors of the county, in case of its refusal to act, to compel such board to ascertain and determine the amount which the person is equitably entitled to receive back, and from which of the towns, as authorized by the act of 1873 (Laws of 1873, chap. 119).

People, *ex rel.* Witherbee, v. Supervisors, 70 N. Y. 229.

A *mandamus* lies to require the chairman and clerk of the board to reconvene the board and declare a resolution *carried*, and the clerk to so record it, where the chairman had before illegally declared it *lost*.

People, *ex rel.* Burroughs, v. Brinkerhoff, 68 N. Y. 259.

The accounts of a sheriff for receiving prisoners into and discharging them from jail, and for their board while confined therein, are proper county charges. (Laws of 1847, chap. 460, § 8, tit. 1, art. 1; 1 R. S. 385, § 3.) The liability of a county extends not only to such official services in cases strictly criminal, but includes also *quasi* criminal offenses, such as violations of city ordinances, the only distinction being that, in the latter cases, instead of the statutory fee, the board of supervisors have power to fix the compensation.

Accordingly *held*, that the granting of a writ of *mandamus* was proper to compel a board of supervisors to audit the accounts of the county sheriff as jailer, for receiving, discharging and boarding prisoners committed by the officers of a city for misdemeanor and violations of city ordinances.

People, *ex rel.* Van Tassel, v. Supervisors, 67 N. Y. 330.

Neither an overseer of highways nor a commissioner of highways under whose direction he acts are agents of the town, and the latter is not chargeable for their nonfeasance, or misfeasance, or for their official acts, or delinquencies.

No corporate duty is imposed upon towns in respect to the care, superintendence or regulation of highways within their limits.

The relator, an overseer of highways, under the direction of the commissioner of highways of the town, removed obstructions from what was claimed to be a public highway. The owner of the land brought an action for trespass, which the relator, without notice to the town, or any of its officers, defended, and a judgment for \$25 damages was rendered against him; he appealed to the general

term and the court of appeals; the judgment was affirmed. The relator then presented a claim to defendants for \$2,711.47 for his expenses and disbursements, which the board refused to allow. *Held*, that he was not entitled to a *mandamus* compelling the audit and allowance of the claim.

People, *ex rel.* Van Keuren, v. Town Auditors, 74 N. Y. 811.

No court can audit a claim against a county, or order any such claim to be paid by the county treasurer, except by authority of some statute.

In 1879 an official stenographer made and furnished to the district attorney a daily copy of the testimony upon a criminal trial. The oyer and terminer, by order, fixed his compensation therefor at twenty-five cents per page, and directed the county treasurer to pay the same. *Held error.*

*In re* Tinsley, 90 N. Y. 231.

Chapter 270, Laws of 1885, providing for the preservation of the public health and the registration of vital statistics, was passed to provide a uniform system for the organization of boards of health throughout the State, and it is applicable to every incorporated village in the State, except those in which boards of health, separate and distinct from the trustees of the village, existed at the time of its passage.

In case the trustees fail to comply with the provisions of the said act, any citizen of the village may apply to the court, for a *mandamus* to compel the trustees to appoint and organize the board of health as required by the act.

People, *ex rel.* Boltzer, v. Daley, 37 Hun, 461.

The rule, that when an act is to be done, the right to do every thing necessary to complete the act is conferred by implication, applied to sustain the right of the county supervisors to take other ballots where the first ballot failed to make a designation of the papers to publish the session laws.

*Mandamus* will lie to compel the supervisors to discharge the duty imposed by the act, to designate the papers.

People, *ex rel.* Hall, v. Supervisors of Greene Co., 13 Abb. N. C. 421-2.

The relator presented to the board of supervisors of Queens county a claim amounting to \$1,890.49 for services alleged to have been rendered by him to the county under a contract. The board adopted a resolution directing the county treasurer to pay to him the sum of \$165.25, "being the amount in full due him from Queens county under his contract with said county." In June, 1883, the relator assigned his claim for the amount audited to one Miller, who received the same from the county treasurer.

*Held*, that the acceptance of this amount concluded the relator and prevented him from further prosecuting a claim for the residue of his bill.

People, *ex rel.* McDonough, v. Supervisors, 23 Hun, 305.

The provision of the act of 1867 (chap. 938, § 1) authorizing and empowering the boards of supervisors of the counties of Herkimer, Otsego, Chenango, Madison, Onondaga, Saratoga and Fulton to hear and determine claims for illegal assessments upon United States securities, and to repay the amount collected upon such assessments, is mandatory. Upon the presentation of a claim thereunder, the only questions to be determined by the board, and in reference to which it has any discretion, are whether the claimant has such a claim, and if so, the amount thereof. Where the fact of the existence of the claim is undisputed, the board has no authority to reject it as illegal; and it can be compelled by *mandamus* to exercise its discretion upon the facts, and the amount of the allowance.

People, *ex rel.* Otsego County Bank, v. Supervisors of Otsego Co., 51 N. Y. 401; People v. Supervisors of Herkimer Co., 56 Barb. 452.

The relator showed that it owned, and was assessed upon, United States stocks; that it paid the taxes claimed, and promptly presented its claim therefor, under said statute, to the defendant. These facts were not disputed. The defendant adopted a resolution in substance that the claim was invalid. *Held*, that a *mandamus*, directing the defendant to hear the claims of the relator, and to determine whether it paid the taxes, as stated, to audit and allow the amount thereof, and

cause the same to be levied and collected, as prescribed by said statute, was proper.

Id.

Where services in conducting prosecutions for penalties, instituted by commissioners of excise, are legally chargeable to the county, it is the duty of the board, in good faith, to audit them; and on their refusal to act, a *mandamus* is the proper remedy to compel them.

People v. Supervisors of Delaware Co., 45 N. Y. 196.

But where a board of supervisors has once considered a claim and audited and allowed it at a certain amount, a *mandamus* cannot issue to compel it to audit the claim anew, and allow it at a greater amount. Where, however, there are distinct and separate items in the account, the board of supervisors can no more wholly reject, or refuse to audit, one of those items, which is a legal charge, on the ground that it is not legal, than they can reject, for that reason, a whole account; and a *mandamus* will go to compel such audit.

Id.

Where a board of supervisors, in auditing the account of the county treasurer, allowed him a compensation beyond what he was lawfully entitled to receive, it was *held*, that a *mandamus* would issue upon the application of a tax payer requiring the board to reconsider, revoke and annul the audit so far as it allowed the unlawful excess.

People v. Supervisors of Westchester Co., 73 N. Y. 173.

The county treasurer has no authority to determine what sum is applicable for investment as a sinking fund under Laws of 1869, chapter 907, section 4, as amended by Laws of 1871, chapter 283. That sum must be fixed before the money is paid over to the treasurer.

Clark v. Sheldon, 20 Dig. 275.

Where bills of several individuals, which were in the form prescribed by law, were duly presented to the board of supervisors of a county, who, acting in their judicial capacity, passed upon and audited the same, giving to each person a certificate of audit, which certificates were duly assigned to the relator, who advanced the money thereon, *held*, that on the refusal of the county treasurer to pay the same, a *mandamus* was the proper remedy to compel their payment.

People v. Fitzgerald, 54 How. 1.

An injunction will not issue at the suit of an individual to prohibit the comptroller of the city of New York from paying funds which the board of supervisors are by law required to authorize him to pay, on the ground that the meeting at which authority was attempted to be given was an illegal one, especially if it be not shown that he is in funds to pay.

Ely v. Connolly, 7 Abb. (N. S.) 8, 9.

At the general election, held in November, 1881, M. and E. were candidates for the office of alderman in the city of Troy. Two of the inspectors of election made out and signed a statement certifying that F. had received a majority of the votes cast. The other two inspectors refused to sign the same. The incomplete statement was filed in the office of the city clerk, and F. took the oath of office. *Held*, that until the rights of the parties were tested in the courts and the result settled, the election was to be treated as a failure, so far as either party sought to found a right upon it, and neither could claim any benefit therefrom; that the provision of the original charter of the city of Troy (Laws of 1816, chap. 131, § 5), providing for the manner of electing aldermen, requiring inspectors of election, by a written statement, to certify and declare the result and file their certificate in the office of the city clerk, has not been repealed or modified unless the general election law was applicable, and that makes the duties of inspector, in ascertaining and declaring the vote, even more specific; and that by such failure to elect, a vacancy was created. (Laws of 1855, chap. 101, § 6.)

People, *ex rel.* Woods, v. Crissey, 91 N. Y. 616.

Under Laws of 1880, chapter 460, whenever it appears by affidavit that errors have occurred in the proceedings of the board of county canvassers, the court can reconvene them, and compel them, by *mandamus*, to correct the error.

The powers of a board of county canvassers, being derived solely from the statute, which imposes purely ministerial duties, cannot be extended beyond a mere count of what appear, *on their face*, to be the original returns, and which are apparently regular.

The only question for consideration upon an application for a *mandamus* to compel the canvass and certification of a vote is whether the returns before the board are the *original* returns of the inspectors.

The rejection, by a board of county canvassers, of an original return of an election district upon affidavits that the duplicate, or copy, which had been filed with the clerk, had been changed by the inspectors after filing, and upon observing that the original, as presented by the supervisor, contains a like change, is in excess of their powers, and will be corrected by *mandamus*, although the majority of the board did not consider it to be the original.

The result of such rejection is to disfranchise a portion of the electors within the prohibition of the Constitution (Art. 11, § 1).

People, *ex rel.* Deuchler, v. Board of Supervisors of Wayne Co., 12 Abb. N. C. 77.

For other decisions as to elections, see *ante*, "Elections."

Doubtless, in the operation of the election laws, there may be some essentials entering into the methods of taking and returning the votes, by which the inspectors of election, who are in some sort the agents of the electors at large, may violate the statutes to the extent of working in a given case a practical rejection of honest votes. But it is not the province of the board of county canvassers to adjudge it. They discharge their whole power and duty when, as accurate accountants, they return to the State canvassers the results of the apparently and ostensibly fair figures which may be presented to them.

People, *ex rel.* Deuchler, v. Board of Supervisors of Wayne Co., 12 Abb. N. C. 88.

A board of county canvassers has no power to determine that votes cast for and returned to one name *e. g.* — Andrew C. Getty — were intended for and should be counted and allowed to a person bearing another name — Andrew H. Getty, It has no power to take proof as to such facts nor to make such determination in its absence.

Upon an application for a *mandamus* under Laws of 1880, chapter 460, authorizing the writ to correct errors in the determination of boards of county canvassers the court has no greater power than the board itself, and must direct a canvass of the vote as cast, even though it appear by affidavits that the votes were all intended for the one person

Kortz v. Board of Canvassers of Greene Co., 12 Abb. N. C. 84.

Where there is reasonable ground to believe that the return of a board of inspectors of an election district is not accurate, a *mandamus* will issue requiring the board of county canvassers to remit such return to the board of inspectors for such correction as they may see fit to make. Such *mandamus* will issue although the canvass has been completed and a certificate of election granted to one who has already qualified for the office in dispute.

It is the duty of inspectors of election to make, in their return, a true statement of the result of the election in their district, and until they have done so their duty is undischarged. Their duty is not discharged by making a false or erroneous return, nor do they thereby become *fructus officio*.

People, *ex rel.* Sanderson, v. Board of Canvassers of Greene Co., 12 Abb. N. C. 96.

A return of an election district having been, by direction of the court, returned to the inspectors for correction, and an application being made for a *mandamus* directing them to reassemble to make a full and true return to the board of county canvassers of all the votes cast for the office in dispute, *held*, that such *mandamus* should issue, although two of the inspectors deposed that the return as made was "substantially" accurate, and that if they met as a board they could not change the same in any "material" particular, and it appeared that there had been a hasty assemblage of the inspectors, and that they had made a return to the board of canvassers to the same effect.

In such case, it appearing that the error, if any, in the original return had been made by incorrectly adding the votes counted by each inspector, *held*, that the *mandamus* should direct a return separately of the count of each inspector.

People, *ex rel.* Sanderson, v. Payne, 12 Abb. N. C. 103.

At the general election in 1882, in a town in the county of K., an election of a justice of the peace was attempted as provided for in said act; no election was had at the town meeting of that year; ballots were cast for such officers at the usual town meeting in April, 1883, the relator receiving a majority; the ballots were regularly returned by the inspectors of election to the town clerk. The board of canvassers, however, refused to canvass such returns, or make their certificates of election. *Held*, that the attempted election at the general election was ineffectual to confer title to said officer upon the person receiving a majority of votes. That the election at the town meeting in 1883 was valid and regular, and the relator was entitled to demand a canvass, which, having been refused, he was entitled to a *mandamus* to compel said board to meet and make such canvass; that although said board were required to meet on a particular day, they continued a board of canvassers until their whole duty was performed; and that the relator lost no right by their adjournment without discharging their duty.

A writ of *mandamus* is proper to compel the performance of an official duty, in a case where it has been wholly omitted by the officer charged with the duty, and where a right to require the performance exists in the party demanding it, and it is still possible of execution.

People, *ex rel.* Smith, v. Schiellein *et al.*, 95 N. Y. 125.

*Mandamus* will not issue to restrain a party claiming to be public officer from exercising his office, or to enjoin one claiming to have been elected or appointed to an office, from qualifying.

People v. Ferris, 76 N. Y. 326.

As to *mandamus* to correct errors in determination of the board of county canvassers, see Laws of 1880, chap. 460, in chap. IV, *ante*.

**§ 826. Certiorari.**—*Certiorari* to review assessments by the assessors is governed by Laws of 1880, chapter 269, not by the Code of Civil Procedure.

People, *ex rel.* Walkill v. R. R., v. Keator, 36 Hun, 592; People, *ex rel.* A. & G. B. Co., v. Assessors, 34 id. 321.

For other cases, see Code of Civ. Pro., § 2120 *et seq.*; Throop's notes to chap. XVI, art. 7, tit. 2, Code of Civ. Pro.

The following decisions apply to supervisors :

Defendant, in December, 1878, issued its warrant to the collector of the town of F. for the collection of the annual tax levied on the town, which included items for the payment of an installment of principal and interest on bonds of the town issued to pay for a highway improvement. On January 6, 1879, an order was granted for defendant to show cause why a writ of *certiorari* should not issue, and on February 4, 1879, the writ was issued, and judgment entered directing that the said items be stricken from the tax-roll, and the warrant amended accordingly. *Held error*; that the jurisdiction of defendant and its power to amend the roll terminated with the levy of the tax and the delivery of the roll and warrant to the proper officer; that neither the roll nor the warrant was before the court, and the directions in the judgment were wholly unavailing.

People, *ex rel.* Weeks, v. Supervisors of Queens Co., 82 N. Y. 275-6.

If a party is not satisfied with the amount of his claim he should review it, or take such remedy as remains to him, before accepting the award. By an acceptance of the audit, and the order issued in accordance with it, he adopts and ratifies the proceedings had in regard thereto.

People, *ex rel.* Brown, v. Supervisors of Herkimer Co., 3 How. (N. S.) 241.



## CHAPTER XVI.

### DIGEST OF FEES, ETC.

#### ASSESSOR'S FEES.

For each day's <i>actual and necessary service</i> performed by, for town..	\$2 00
<i>Town charge.</i>	
1 R. S. 839.	

#### TOWN AUDITORS

To consist of the supervisor, justices and town clerk, except certain towns in the counties of Clinton, Madison, Warren and Essex.

For each day's <i>actual and necessary service</i> performed, each.....	\$2 00
Id.	

In the towns of Ausable, Champlain, Peru and Plattsburgh in the county of Clinton; the town of Lenox in the county of Madison; the towns of Queensbury, Chester and Caldwell in the county of Warren, and the county of Essex.

For each day's <i>actual and necessary service</i> "not to exceed three days (except in towns having a population of six thousand or over, in which case they are allowed to sit six days each".....	\$3 00
<i>Town charge.</i>	

Laws of 1881, chap. 370, § 5, as amended by Laws of 1883, chap. 180

#### CENSUS ENUMERATORS.

Per day actually and necessarily employed .....	\$3 00
1 R. S. 267.	

To be audited by the board of supervisors, but not until the secretary of State shall notify the clerk of the board, of the receipt and acceptance of the returns for which compensation is claimed.

#### CLERK OF THE POLLS.

<i>Each day</i> .....	\$2 00
<i>Town charge.</i>	
Laws of 1870, chap. 242.	

#### COMMISSIONERS OF EXCISE.

For each day's <i>service</i> on board.....	\$3 00
<i>A town charge</i> , except in counties where the poor are all a county charge.	
3 R. S. 1990.	

## HIGHWAY COMMISSIONERS' FEES.

For each day's actual and necessary service for town..... \$2 00

*Town charge.*

2 id. 1218.

## COLLECTORS.

On all sums paid within *thirty days* from the first posting notices, 1 per cent.  
*After thirty days*..... 5 per cent.  
*Collecting dog tax*..... 10 per cent.

## FEES OF CONSTABLES.

## SERVICES IN CIVIL ACTIONS.

For serving <i>summons</i> .....	\$ 25
For serving <i>warrant</i> with <i>summons</i> and <i>order of arrest</i> .....	1 00
For serving an <i>attachment</i> with <i>summons</i> .....	1 00
For serving an <i>execution</i> , for every dollar collected to the amount of \$50 .....	05
For every dollar collected over \$50.....	02½
For attending before another justice when original justice a witness	50
With <i>person in custody</i> , in addition.....	50
For notifying plaintiff of service of <i>warrant</i> .....	25
For subpoenaing witnesses, not exceeding four, each.....	25
For summoning a jury.....	75
For summoning jury to assess damages in proceedings relative to highways.....	2 00
For serving <i>affidavit</i> , <i>notice</i> and <i>summons</i> in proceedings to recover possession of personal property .....	1 00
For taking charge of a <i>jury</i> .....	50
For every mile traveled to serve <i>summons</i> , <i>warrant</i> , <i>attachment</i> or <i>execution</i> , or any other <i>mandate</i> , the distance to be computed from the place of abode of the defendant, or where he shall be found, to where the precept is returnable, going and returning... ..	10
For every mile traveled, going and returning, in notifying plaintiff of the service of an order of arrest.....	10

## IN SPECIAL PROCEEDINGS.

For serving <i>precept</i> or other <i>mandate</i> by which proceeding is commenced .....	\$ 25
For serving a <i>warrant</i> .....	50
For arresting and committing any person pursuant to process.....	1 00
Every mile traveled going and returning.....	10
For serving <i>order</i> directing proceeding before another justice and attending before the latter.....	1 00
For subpoenaing each witness, not exceeding four.....	25
For summoning a jury in case of the <i>laying out</i> or <i>altering</i> a road, for summoning each juror, to be paid by the applicant.....	10
For each mile actually and necessarily traveled in summoning such jury (Code, § 3323) .....	10
Notifying jury to assess damages relating to highways.....	2 00

## IN CRIMINAL CASES.

For serving <i>warrant</i> in a criminal case, if an arrest is made (1 Denio, 658).....	\$ 75
For every mile traveled, if an arrest is made, going or returning (Laws of 1877, chap. 89).....	10
For taking defendant into custody on a mittimus.....	25

Mileage same as for <i>warrant</i> , each mile.....	\$ 10
For <i>taking charge</i> of a <i>jury</i> .....	50
For <i>attending court</i> pursuant to notice from sheriff, for each day....	2 00
For each mile <i>traveled</i> in going to and returning from such court, payable by county treasurer on clerk's certificate (Code, § 3312).	05
For serving a <i>subpoena</i> for each witness.....	25
Mileage on distance <i>actually</i> and <i>necessarily</i> traveled, going and re- turning, to serve subpoena on all the witnesses and not separate mileage for each witness, for each mile (3 R. S. 2580, 2585).....	05
Notifying <i>complainant</i> .....	25
<i>Mileage</i> going and returning.....	05
Keeping <i>prisoner</i> per day (3 R. S. 2585, § 8; Laws of 1877, chap. 89).	1 00

The board of supervisors may allow such further compensation for the service of process and the trouble and expense attending the same, as they shall deem reasonable.

3 R. S. 2578, § 4.

For other services in criminal cases, for which no compensation is specially provided by law, such sum as the board of supervisors of the county shall allow.

Id.

In all cases in which a specific compensation for any service is not provided by law, the officer or person presenting an account therefor shall also exhibit in writing a just and true statement of the time actually and necessarily devoted to the performance of such services.

1 R. S. 978, § 2.

No travel fees shall be allowed for traveling to subpoena witnesses beyond the limits of the county or an adjoining county, unless the board auditing the account shall be satisfied, by proof, that such witness could not be subpoenaed without such additional travel; nor shall any travel fees for subpoenaing witnesses be allowed, except such as the board auditing the account shall be satisfied were indispensably necessary.

1 R. S. 846, § 27.

There is a chance for discussion in relation to constables' fees (given above in criminal cases and taken from Laws of 1866, chap. 692, as amended by Laws of 1877, chap. 89; 3 R. S. 2585), as to whether all such fees are not county charges. After enumerating certain fees the concluding sentence reads as follows: "For attending any court pursuant to a notice from the sheriff for that purpose \$2 for each day and five cents a mile for each mile traveled, in going to and returning from such court;" then follows a semi-colon just as in the other enumeration of fees; after which these words occur, "which fees shall be chargeable to the county and shall be paid by the treasurer thereof on the production of the certificate of the clerk, specifying the number of days and distance traveled." It is the opinion of the editor, from an enumeration of the whole section and from the original act of 1866, that it was not meant to make *all* such services a *county charge*, but only those for attending court and mileage in going and returning therefrom, and that the division of fees between town and county was undisturbed.

See "Note A."

# COMMISSIONERS FOR LOANING MONEYS OF U. S. DEPOSIT FUND.

Each year, may retain out of the interest of moneys committed to their charge:

Upon \$25,000 or a <i>less</i> sum.....	3-4 of 1 per cent.
Upon <i>further</i> sum of \$25,000 or less.....	1-2 of 1 per cent.
Where the <i>whole sum</i> shall not exceed \$50,000.....	1-2 of 1 per cent.
Except in <i>New York County</i> , in which county, upon all <i>sums</i> ex- ceeding \$50,000, retain.....	1-4 of 1 per cent.

1 R. S. 514, § 18.

## CORONER.

## FEES OF CORONERS — COUNTY CHARGE.

Mileage to <i>place of inquest</i> and <i>return</i> , per mile.....	\$ 10
<i>Summoning</i> and <i>attendance</i> upon jury.....	3 00
<i>Viewing</i> body.....	5 00
Serving <i>subpœna</i> , per mile traveled.....	10
Swearing each <i>witness</i> .....	15
Drawing <i>inquisition</i> for jurors to sign.....	1 00
<i>Copying inquisition</i> for record, per folio.....	25
(But such officer shall receive pay for one copy only.)	
For making and transmitting <i>statement</i> to board of supervisors, each <i>inquisition</i> .....	50
For <i>warrant</i> of commitment.....	1 00
For <i>arrest</i> and <i>examination</i> of offenders, fees shall be the same as justices of the peace in like cases.	
When required to do the duties of a <i>sheriff</i> , shall be entitled to and receive the same fees as sheriffs for the performance of like duties.	
Shall be reimbursed for all moneys paid out <i>actually</i> and <i>necessarily</i> by him in the discharge of official duties.	
Shall receive for each and every day and fractional parts thereof spent in taking <i>inquisition</i> (except for one day's service).....	3 00
For performing the requirements of law in regard to <i>wrecked vessels</i> , shall receive per day and fractional parts thereof.....	3 00
And a reasonable compensation for all official acts performed, and mileage to and from such wrecked vessel, per mile.....	10
For taking <i>ante-mortem</i> <i>statement</i> , shall be entitled to the same rates of mileage as before mentioned, and per day and fractional part thereof.....	3 00
For taking <i>deposition</i> of <i>injured person</i> in extremis.....	1 00
Whenever, in consequence of performance of his official duties, a coroner becomes a <i>witness</i> , he shall be entitled to receive mileage to and from his place of residence, per mile.....	10
For each day or fractional parts thereof <i>actually detained</i> as such <i>witness</i> .....	3 00

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Laws of 1873, chap. 833; 3 R. S. 2586.

A coroner shall have *power*, when necessary, to employ not more than two competent *surgeons* to make *post-mortem* examination and *dissections* and to *testify* to the same, the compensation therefor to be a county charge.

3 R. S. 2586.

NOTE.— Before any coroner's account can be audited he must make a written sworn statement of moneys, etc., found on deceased persons, and that the same has been delivered to the legal representative of the deceased or to the county treasurer.

Code of Crim. Pro., § 788.

The fees of jurors necessarily summoned upon any coroner's inquest shall be not to exceed one dollar for each day's service, shall be a county charge, and shall be audited and allowed by the board of supervisors in the same manner as other fees and charges mentioned in this act. But the coroner holding such inquest and summoning said jurors shall make report to the next succeeding board of supervisors after every such inquest of the name of such jurors and the term of service of each, and upon what inquest rendered, on or before the third day of the annual session in each year.

3 R. S. 2586.

COUNTY CLERK'S FEES.

COUNTY CHARGE.

For copy of <i>order, record</i> or other <i>paper</i> entered or filed in his office, per folio .....	\$ 08
For filing and entering <i>collectors' bond</i> .....	12
For searching for such <i>collectors' bond</i> .....	06
For entering satisfaction of the same .....	12
For <i>sealing</i> any paper when required .....	12
For <i>filing</i> any paper required to be filed, except as otherwise specified .....	06
For <i>inquiring</i> into, <i>determining</i> and <i>certifying</i> sufficiency of sureties of <i>sheriff</i> .....	50

Code of Civ. Pro., § 3304.

[As clerk of courts of oyer and terminer and court of sessions.]

For <i>swearing witness</i> .....	06
For <i>entering</i> or <i>respiteing</i> a <i>recognizance</i> .....	12½
For calling and swearing a <i>jury</i> .....	19
For entering <i>sentence</i> in minutes kept by him .....	12½
For every <i>certified copy</i> thereof .....	12½
For <i>transcript</i> thereof for secretary of State .....	12½
For copies of <i>records, indictments</i> and other <i>proceedings</i> , per folio ..	08

3 R. S. 2579.

For <i>attending</i> upon canvass of election .....	2 00
For drawing <i>necessary certificates</i> of the results of the election, per folio .....	18
For <i>necessary copies</i> thereof, per folio .....	09
For <i>recording</i> such certificate, per folio .....	10

Code of Civ. Pro., § 3304; 1 R. S. 392.

For travel fees, delivering <i>statement</i> of <i>presidential</i> election per mile (State charge) .....	05
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Laws of 1885, chap. 446.

No county clerk shall charge against the county for fuel or lights for his office, or for stationery, except record books and stationery furnished for the courts held in the county.

Laws of 1844, chap. 125.

Other fees are discretionary with the board of supervisors unless given by some statute.

COURT CRIER.

Calling a <i>jury</i> .....	\$ 12½
Calling and swearing <i>witness</i> .....	06
Making <i>proclamation</i> for discharge of any person .....	06
Calling any person on <i>recognizance</i> .....	06

See *ante*, § 499.

FENCE VIEWERS.

TOWN CHARGE.

The assessors and commissioners of highways are the fence viewers.

COMPENSATION.

The electors have the power at the annual town meeting to fix their compensation.

1 R. S. 809.

For *examining* and *certifying* in relation to *sheep* killed or injured by *dogs*, such compensation as may have been fixed by the town meeting; but in counties working under the Ontario county dog law, the town auditors have the power, if no such action has been taken by the town meeting, of auditing the same.

Other charges to be paid by the parties interested, viz.:

For services in relation to <i>division fences</i> , for each day, each fence viewer is entitled to.....	\$1 50
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The proportion thereof to be paid by each party interested is determined by the fence viewers.

1 R. S. 833, § 43.

Services in relation to *floating timber*, etc., to be paid by owners of lumber

3 R. S. 2087, § 2.

Services as to strays to be paid by the owner of the strays or the person applying for the certificate, viz.:

For <i>certificate</i> of the charges ascertained by him.....	\$ 25
Mileage for every mile he shall be obliged to travel from his house to the place where the strays are kept.....	06

1 R. S. 830, §§ 22, 23

#### GAME CONSTABLE.

Same compensation for *services* as is allowed constables of towns and also one-half of the penalties recovered by him.

See "Constables;" "County Charges;" "Game Constable."

#### GUARDS FOR JAILS.

Such <i>compensation per day</i> as shall have been agreed upon, not exceeding for each <i>private</i> .....	\$1 00
For each <i>officer</i> not exceeding.....	2 00
For each horse employed singly.....	1 00
For each <i>two-horse team</i> and <i>driver</i> not exceeding.....	3 00

Laws of 1845, chap. 69; 1 R. S. 792, § 8.

*County charge.*

Id., §§ 12, 13.

If the board of supervisors think it unreasonably burdensome to raise the whole thereof in one year, said charges may be divided into two or three equal parts, one whereof shall be collected in each successive year until the whole is paid.

Id., § 13.

#### INSPECTOR OF ELECTION.

##### TOWN CHARGE.

For each day's actual and necessary service.....	\$2 00
To one inspector, for taking returns to county clerk, except in cities and towns where the county clerk's office is situated.....	5 00
For each mile traveled to take returns <i>going</i> and <i>returning</i> .....	04

Laws of 1880, chap. 56, § 14.

JURORS.

Such sum may be allowed every <i>grand</i> or <i>petit juror</i> , for attending courts of record, as the board of supervisors direct, not exceeding per day .....	\$2 00
For mileage going to and returning from such courts not exceeding per mile.....	05

If trial extends beyond thirty days, such additional sum as court may allow.

Code of Civ. Pro.. §§ 3313, 3314, 3315.

*County charge.*

They are entitled to a fee of twenty-five cents for each case in which they are empaneled to try a cause, to be paid by the parties.

CORONER'S JURY.

COUNTY CHARGE.

For each day's service.....	\$1 00
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JUSTICES OF THE PEACE.

SERVICES IN CIVIL ACTIONS.

Shall receive for a <i>summons</i> .....	\$ 25
For an <i>order of arrest</i> .....	25
For a <i>warrant of attachment</i> .....	25
For a <i>requisition</i> in an action for a chattel ( <i>replevin</i> ).....	25
For a <i>subpoena</i> , including all the names inserted therein.....	25
For the <i>acknowledgment</i> of a power of attorney.....	25
For taking an <i>affidavit</i> or administering an oath .....	10
For drawing an <i>affidavit</i> , application, or notice required by statute, <i>per folio</i> .....	05
For drawing a <i>bond</i> or an <i>undertaking</i> .....	25
For hearing an <i>application</i> for a <i>commission</i> to examine one or more witnesses .....	50
For an <i>order</i> for such a commission, and attending, settling and certifying interrogatories.....	50

Code of Civ. Pro., § 3322.

For taking and returning <i>testimony</i> as a commissioner.....	1 00
For each <i>subpoena</i> issued....	06
For each <i>oath</i> administered .....	06
For <i>postage</i> in returning the commission and papers annexed thereto	1 00

Id., § 3325.

For hearing an application to <i>discharge</i> a defendant from arrest, or to vacate or modify a warrant of attachment, or increase the plaintiff's security thereupon.....	50
For an <i>adjournment</i> , except where it is made by the justice on his own motion.....	25
For a <i>venire</i> .....	25
For <i>impaneling</i> and swearing a <i>jury</i> .....	25
For hearing <i>plaintiff's evidence</i> where the defendant does not appear..	25
For the <i>trial</i> of an issue where the defendant appears.....	75
For the trial of a <i>demurrer</i> .....	25
For receiving and entering the <i>verdict</i> of a jury.....	25
For entering <i>judgment</i> .....	25

For <i>filing</i> each paper required by statute to be filed (in civil cases only).....	\$ 05
For a <i>transcript</i> of judgment.....	25
For a <i>copy</i> of a paper for which a fee is not expressly prescribed by law, per folio.....	06
For an <i>execution</i> or the <i>renewal</i> of an execution.....	25
For making a <i>return</i> to an appeal from a judgment.....	2 00
For an <i>order</i> directing the action or special proceeding to be continued before another justice.....	25

For services when associated with another justice, in any case, where a fee therefor is not expressly prescribed by law, for each day actually spent.....	\$2 00
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Fees in a special proceeding, or an action not brought before a justice of the peace:

For a warrant in case where a fee therefor is not expressly prescribed by law.....	\$ 25
For a warrant for the apprehension of a person charged with being the father of a bastard.....	50
For indorsing a warrant issued from another county.....	25
For services when associated with another justice, in any case where a fee therefor is not expressly prescribed by law, for each day actually spent.....	2 00
For a precept or other mandate, whereby a special proceeding is commenced, in a case where a fee therefor is not especially prescribed by law.....	25
For a view of real property, in a case where it is required by law...	50
For a warrant of attachment to arrest a delinquent juror or witness.	25
For drawing, signing and depositing with the clerk a minute or record of conviction of such juror or witness, or of any person for contempt, in any case where a fee therefor is not especially prescribed by law.....	50
For an execution on such a conviction before him.....	25
For drawing, copying and certifying a bond, an undertaking, recognition or other written security, and filing the same with the county clerk or other officer with whom it must be filed.....	25
For a subpoena, including all the names inserted therein.....	25
For a precept to notify a jury.....	50
For impaneling and swearing a jury, special cases.....	25
For swearing a jury in proceedings to lay out or alter a highway....	2 00
For hearing the matter, concerning which a jury is called.....	50
For receiving and entering the verdict of the jury, and the order, if any, thereupon.....	25
For any service for which a fee, not expressly allowed by this subdivision, and for which, if rendered in an action before a justice, a fee is allowed by the first subdivision of this section, the fee allowed in such an action for the same service.	
For taking the deposition of a witness upon an order made or commission issued by a court of record of the State, or a court in another State, or a territory, or a foreign country, for each folio...	10
For making the necessary return and certificate thereto.....	50
For warrant of commitment for any cause.....	25

Code, § 3322.

For <i>warrant</i> to put <i>landlord</i> in possession of land in summary proceedings.....	25
For each day's service performed for the <i>town</i> .....	2 00

Laws of 1870, chap. 242; 2 R. S. 1218.

For holding *inquests*, same fees as coroners.

3 R. S. 2575, § 3.



CRIMINAL CASES.

AS ESTABLISHED BY CHAPTER 188, LAWS OF 1884, AMENDING SECTION 3, CHAPTER 692, LAWS OF 1866, AND SECTION 3322, CIVIL PROCEDURE.

Administering an oath.....	\$ 10
Drawing an information.....	25
Taking deposition of witness on information.....	25
Issuing warrant of arrest (except in bastardy cases in which his fee is 50c).....	25
Indorsing warrant from another county.....	25
Warrant of commitment.....	25
Subpœna, including all names inserted therein.....	25
Each copy of subpœna for service.....	10
Filing each paper required by law.....	05
Furnishing copies of papers in any proceedings, per folio, 100 words.....	05
Each order in writing or certificate required by law.....	25
Drawing undertaking of bail.....	25
Taking an acknowledgment.....	25
Each day's necessary attendance upon hearing or examination of accused.....	1 00
Each necessary adjournment of the hearing or examination.....	25

SPECIAL SESSIONS.

AS ESTABLISHED BY SECTION 4, CHAPTER 692, LAWS OF 1866.

Venire.....	\$ 25
Swearing each witness.....	15
Swearing the jury.....	20
Swearing constable, to attend jury.....	10
Subpœna, all names.....	25
Each actual and necessary day of trial.....	1 00
Receiving and entering verdict of jury.....	25
Entering sentence of court.....	25
Warrant of commitment on sentence.....	25
Record of conviction and filing same.....	75
But all such charges in any one case shall not exceed \$5, unless such court continues more than one day, in which case the cost of such additional day may be added thereto.	
Return to any writ of certiorari (when to be paid by the county)....	2 00
Each day actually and necessarily occupied when associated with another justice in case of bastardy.....	2 00

§ R. S. 2585.

The bill shall in all cases contain the name and residence of the complainant, the action of the justices on such complaint, the offense charged, the constable or officer to whom any warrant on such complaint was delivered, whether the person charged was or was not arrested, whether an examination was waived or had, and witnesses sworn therein; and the account shall also show the final action of the justice in the premises.

Laws of 1871, chap. 274.

SERVICES AS JUSTICE OF SESSIONS.

For each day.....	\$3 00
Mileage going and returning per mile.....	05

Code of Crim. Pro., § 49.

There are local acts changing this amount.

## LOAN COMMISSIONERS.

See "Commissioners of Loans."

## MILITIA.

To all musicians and privates, per day.....	\$1 25
To all non-commissioned officers.....	1 50
To all commissioned officers of the line, below the rank of captain..	2 50
To all commanding officers of companies.....	3 00
To all field officers, below the rank of colonel.....	4 00
To all commanding officers of regiments or battalions.....	5 00
To all brigadier-generals.....	6 00
To all major-generals.....	8 00
All mounted officers, and all members of any troop or battery, mounted and equipped, shall be paid per day for each horse ac- tually used by them. ....	2 00

All staff officers the same pay and allowances as are allowed to officers of equal grade in the line.

Laws of 1884, chap. 323.

## OVERSEER OF HIGHWAYS.

## TOWN CHARGE.

If any overseer of highways shall be employed more days in exe- cuting the duties devolving upon him by law than he is assessed to work on the highway, he shall be paid for the excess, per hour for each day.....	\$ 12½
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Laws of 1880, chap. 308; 2 R. S. 1215.

## OVERSEER OF THE POOR.

For each day's service.....	\$2 00
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Laws of 1870, chap. 242; 1 R. S. 839.

*Town charge.*

## PHYSICIANS.

## IN TOWNS.

Health officer. Compensation to be fixed by board of health.

Laws of 1885, chap. 270, § 3, subd. 2.

## COUNTY CHARGES.

When employed by *coroners* to make *post-mortem* examinations and dissec-  
tions, and testify to the same, compensation is fixed by the board of supervisors.

3 R. S. 2586, § 2.

In counties where there is a poor-house, and having more than one superin-  
tendent of the poor, the superintendents appoint the physician to the poor-house  
and audit and settle the accounts therefor.

3 R. S. 1870-1875.

For services in *examining* and *certifying* in reference to the *insanity* of any per-  
son such sum as may be allowed by the board of supervisors.

3 R. S. 1904.

## DIGEST OF FEES.

493

For attending as a <i>witness</i> before the <i>county judge</i> , each day.....	\$ 50
For each mile <i>traveled</i> to place of attendance.....	08

Code of Civil Procedure, § 3318.

The compensation of jail physician is fixed by the board of supervisors.

Id., § 126.

## PRINTER'S FEES.

### COUNTY CHARGE.

For publishing any advertisement required by law to be published (except session laws and except as otherwise prescribed by law) for each folio,

First insertion.....	\$ 75
Each subsequent insertion.....	50

The compensation for printing the session laws is to be fixed by the board at not more than fifty cents for each folio.

Code of Civil Pro., § 3317.

The expense of printing court calendar (Code Civil Pro., § 20), publishing resolutions of board (Laws of 1875, chap. 482, § 6), publishing claims audited and proceedings upon equalization of assessment-roll (Laws of 1839, chap. 369) are a county charge.

The compensation for printing election notices and official canvass is to be fixed by the board (Laws of 1875, chap. 482, § 7).

But in the absence of any contract the printer is entitled to the compensation prescribed by law.

People v. Supervisors of Cortland Co., 58 Barb. 139.

## RAILROAD COMMISSIONERS.

For each day <i>actually</i> engaged in the discharge of their duties and their necessary disbursements.....	\$3 00
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Laws of 1869, chap. 907; 1 R. S. 873.

A town charge.

## SCHOOL COMMISSIONERS.

Annual salary.....	\$1,000 00
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The board of supervisors may increase this.

Laws of 1885, chap. 340, § 5; amending Laws of 1864, chap. 555.

The sum of .....	\$200 00
per year to each commissioner to be assessed upon the towns comprising his district.	

Laws of 1864, chap. 555, § 9; 2 R. S. 1145.

## SEALER OF WEIGHTS AND MEASURES.

For sealing and marking every beam. ....	\$ 10
For sealing and marking measures of extension at the rate, per yard, of.....	10
Not to exceed for any one measure.....	50
For sealing and marking every weight.....	05
For sealing and marking liquid and dry measures for each measure..	10

For making weight and measures conform to the standards in his possession, a reasonable compensation.

2 R. S. 1848-9, § 27.

### SHERIFF'S FEES.

For every person committed to jail.....	\$ 37½
For every person discharged from jail.....	37½
For summoning grand jury.....	10 00
For notifying constables to attend a court, each.....	50
For attending term of court, which he is required by law to attend, each day..	3 00
For giving notice of any general or special election to all officers to whom he is required by law to notify, for each town or ward.....	1 00
For attending before an officer to surrender a prisoner or receive prisoners surrendered, in exoneration of his bail, including all services upon such surrender.....	1 00
For attending a view each day.....	2 00
For traveling, going and returning, each mile.....	08
For bringing up a prisoner upon writ of habeas corpus.....	1 50
For traveling to and from jail, each mile.....	12
For bringing up prisoners upon any other than writ of habeas corpus	1 50
For attending the court or judge thereon, each day .....	1 00
For taking defendant into custody on a mittimus .....	25
For every mile traveled in taking prisoner to jail, going and returning.	10
Serving a subpoena for each witness .....	25
Mileage thereon going and returning.....	05
For serving warrant in criminal case (if an arrest is made).....	75
Mileage thereon (if an arrest is made), going and returning..	10

(Actual and necessary expenses in addition to the last four items.)

For any services which may be rendered by a constable, other than those above, same fees as constables are allowed.

See "Fees of Constables."

3 R. S. 2579, § 11; Code Civ. Pro. 3307.

No charge for issuing or serving any subpoena in a criminal case or proceeding on behalf of a defendant shall be allowed.

Laws of 1845, chap. 180, § 18; 3 R. S. 2548.

The fees paid by him to the county clerk for drawing grand juries, and his own fees for attending such drawing of grand juries are a county charge.

Laws of 1831, chap. 320.

In all cases in which a specific compensation for any services is not provided by law, the officer or person presenting an account therefor shall also exhibit in writing a just and true statement of the time actually and necessarily devoted to the performance of such services.

2 R. S. 978, § 2.

For the following services required by various statutes, the compensation is in the discretion of the board of supervisors:

For proclamation of courts.

For attending upon the drawing of a grand and petit jury.

3 R. S. 2559, § 16.

For summoning petit jury in criminal cases.

For board and care of prisoners in jail.

2 R. S. 978, § 3.

\*For execution of the death penalty.

For summoning county officers, physicians, and jury, to witness execution of death penalty.

For necessary expenses of execution.

For preparing statements of prisoners in jail for district attorney.

For preparing *calendar* of prisoners in jail for court of oyer and terminer and court of sessions.

3 R. S. 2593, § 25.

For collecting statistics for secretary of State relating to convicts in criminal courts.

Crim. Court, §§ 945-6.

For conveying prisoners, etc.

See *ante*, pp. 360; 3 R. S. 2633.

All convicts sentenced to the same State prison or house of refuge, at one session of the court, are to be transported at the same time, unless the court shall expressly direct otherwise.

Laws of 1847, chap. 497, § 5; 3 R. S. 2583.

#### STATE CHARGES.

For conveying one convict to a State prison or penitentiary, from county jail, for each mile actually traveled.....	\$ 20
For conveying two convicts, for each mile traveled.....	35
For three convicts, for each mile.....	40
For four or more convicts, for each mile for each convict.....	12
For maintenance of each convict on the way thereto, per day.....	1 00
But not exceeding for every thirty miles travel, in full of all charges and expenses in the premises.....	1 00

3 R. S. 2587.

\* For execution of the death penalty of a convict in the State prison or State reformatory for a crime committed during his imprisonment the expenses are a State charge.

Laws of 1882, chap. 389.

#### STENOGRAPHER.

See *ante*, "County Charges."

#### SUPERVISORS.

##### TOWN CHARGES.

For each day's service performed except when attending the board of supervisors.....	\$2 00
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1 R. S. 839.

Mileage for all necessary travel in the discharge of his official duties, per mile.....	08
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2 R. S. 933, § 10.

There is no fixed compensation for approving and filing collector's bond, and there has been none since the act of 1876, chapter 257 was amended by the Laws of 1881, chapter 97.

The allowance to be given is governed by the law given above (1 R. S. 839) at a reasonable compensation per day and mileage.

## COUNTY CHARGES.

For <i>services</i> , except in New York, Albany, Rensselaer, Kings, Oneida, Erie and Broome counties, <i>attending</i> the <i>sessions</i> of the board of supervisors each day, including the whole twenty-four hours.....	\$3 00
<i>Copying</i> the <i>assessment-roll</i> , including the extension of the tax to be delivered to the collector, each written line:	
For first one hundred lines.....	03
For second two hundred lines.....	02
For each line in excess of three hundred.....	01
<i>Mileage</i> , per mile, for <i>once</i> going and returning from his residence, to the place where sessions of the board shall be held... ..	08

*Actual expenses* incurred in any investigation or other duty lawfully committed to him by the board and which shall require his attendance at any place away from where he shall reside, and five miles or more distant from the place where the board shall hold its sessions.

Laws of 1875, chap. 482, § 8, as amended by Laws of 1886, chap. 63.

See "Digest Decisions." as to Laws of 1875, chap. 482, § 8.

## COUNTY CANVASSERS.

It is the practice to pay each supervisor for	
Each day's attendance .....	\$3 00
Mileage, once going and returning, per mile.....	08
Each assessor per day.....	2 00

1 R. S. 839.

In *Hawkins v. Mayor*, 64 N. Y. 18, it was held that the board of canvassers, although composed of *town* officers, do not meet as such or to perform duties exclusively relating to *town* or *county matters*, but meet as a *distinct board* for a special service.

Whenever services have been rendered which are beneficial to a county, and no specific compensation is provided by law, they may be deemed contingent charges, of the allowance of which the supervisors are the sole judge.

People, *ex rel.* McSpedon, v. Haws, 12 Abb. 204; Brady v. Supervisors, 2 Sandf. 472; affirmed, 10 N. Y. 260.

There seems to be no specific amount fixed for such services.

The services are not "*for the town*," nor "*at the annual session*" of the board of supervisors.

The duty is required by statute, therefore it should be paid for; it is for the benefit of the county, therefore a proper "contingent" charge, to be audited at a "*reasonable*" sum.

## MEETING OF THE STATE ASSESSORS WITH THE SUPERVISORS AND ASSESSORS.

The State assessors are required to visit every county, at least once in two years, and empowered to swear witnesses and examine all persons deemed necessary in the discharge of duties. The town officers are required to furnish them all information belonging to or connected with their respective offices. The meeting is called, not to determine the valuation of the *towns*, but of the *county*, as a whole, compared with other *counties*. The expense would seem, therefore, to be a *county* charge, not a *town* charge. If the assessors receive an annual salary "in lieu of all other compensation," they would not be entitled to extra pay *from the town*, at any rate. The supervisor of the town is generally invited to attend this meeting. For what reason he is so invited, it is difficult to see. He does not assess the property; has nothing to do with the assessment, and has no more

knowledge or information of the subject than any other citizen, and ought not to be required to attend. The assessors have the information, assess the property and are the ones best qualified to enlighten the State officers on this subject, and they can then receive from such officers such suggestions and instructions as are necessary for them to act upon.

TOWN CLERK'S FEES.

TOWN CHARGE.

For each day's actual and necessary service.....	\$2 00
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Laws of 1870, chap. 242; 1 R. S. 839.

For fees, services of county officers, see *ante*, under each title; also "County Charges," "Town Charges," *ante*.

## “NOTE A.”

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It is stated in the text that the board of supervisors should not audit, against any town, the fees for justices of the peace and constables for services in criminal cases, which are by law chargeable to any town. The reasons for this statement are contained in the following history of the law relating to the subject. By the Revised Statutes (1 R. S. 926, § 4, subd. 3) “the boards of supervisors had power to audit the accounts of town officers and other persons against their respective towns, and to direct the raising of such sums as may be necessary to defray the same.”

Under this statute, the board undoubtedly had power to audit the accounts of justices of the peace and constables; but in 1840, by chapter 305, a board of town auditors was provided for the purpose of auditing and allowing the accounts of all charges and claims payable by their respective towns. This act did not take from the board of supervisors the power to audit, which they formerly possessed, but created another board having concurrent jurisdiction upon that subject. In accordance therewith, the courts have decided that where the town board have acted upon claims presented to them in the first instance, the board of supervisors have no power to review or reverse their decision, but were to levy upon the town, under the general taxing power, and raise the amounts specified in the certificate of the town board.

1 Hill, 199; 98 N. Y. 222.

By the Laws of 1845, chapter 180, the fees for officers for criminal proceedings were to be paid by the several towns or cities wherein the offense shall have been committed, and the board of supervisors “shall assess such fees and accounts upon the several towns designated by such accounts.” In 1860, chapter 58, exclusive power was given to the board of town auditors to audit the accounts of justices of the peace and constables for fees in these cases, and the amount therefor was to be included in their certificate and “assessed by the board of supervisors upon such town in the same manner as



other town charges are now assessed and collected," and all acts and parts of acts inconsistent with this act were thereby repealed.

This deprived the board of supervisors of their power to audit these classes of accounts.

In 1866, by chapter 832, the act of 1860 was amended so that the power of the town board to audit these accounts was retained, but the right was given to *any tax payer* to appeal from such audit and allowance to the board of supervisors, who *thereupon* had power to audit and allow such bills.

This did not restore the power to the board of supervisors to audit these accounts, except on appeal as prescribed.

As to constables, the law has not been changed from that day to this; therefore, as to constables, the board of supervisors have no power to audit their claims except on appeal duly brought.

As to justices of the peace, the Laws of 1869, chapter 855, prescribed that "no board of town auditors shall audit a service bill for any member of such town board;" and the accounts of members of the board of town auditors for services "shall be audited by the board of supervisors."

As the justices of the peace were members of the town board, while this law was in existence the town board could not audit the accounts of justices, but the same were to be audited by the board of supervisors; this act, however, did not repeal any prior laws relating to the subject, and in 1871, chapter 274, the act of 1869 was amended and reads as it is now printed in full in the statutes, *ante*.

See Laws of 1869, chap. 855, § 6.

By these acts the town board act upon the accounts of justices of the peace according to the provisions of the law of 1860, as amended in 1866; an appeal was given to any tax payer of the towns interested, to appeal from the audit of the town board of the accounts of any justice of the peace to the board of supervisors, and the said supervisors shall *thereupon* audit the accounts of such justice of the peace, and their decision in the auditing and allowing of said accounts shall be final.

It will be seen from the above that the town board have the right to audit the accounts of justices of the peace, and that the only right that boards of supervisors have to audit these accounts is when they are properly brought to them upon appeal *by a tax payer*.

## ERRATUM.

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The part of section 65, relating to "Penalty for Neglect," and sections 90 and 95, are superseded by chapter 1, *ante*.

See Laws of 1886, chap. 593.

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